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By Darlene Brady at 1:26 pm, Mar 21, 2022

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, March 10, 2022, at 7:00 p.m. via zoom.

1. CALL TO ORDER

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

2. ROLL CALL AND APPOINTMENT OF ALTERNATES IF REQUIRED

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

Staff Present: Donna M. Hayes, LUA

3. READING AND APPROVAL OF MINUTES:

3.A. Regular Meeting Minutes of February 10, 2022.

Mr. Winter asked that the following change be made to the 5th line of the last paragraph on page 4: "...daycare related terms in the regulations and group day care was not allowed."

Mr. Manes moved to approve the Regular Meeting Minutes of February 10, 2022, as amended. Mr. Birnbaum seconded and the motion carried unanimously.

Mr. Manes moved to hear agenda items 6.B.2. and 6.B.3. before agenda item 6.B.1., "New Business". Mr. Birnbaum seconded and the motion carried unanimously.

4. PUBLIC COMMUNICATIONS (ORAL):

There was no public communications.

5. OLD BUSINESS:

TOWN OF KENT PLANNING AND ZONING COMMISSION
REGULAR MEETING MINUTES FOR MARCH 10, 2022

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

No action taken.

5.B. DISCUSSION AND POSSIBLE DECISION

5.B.1. Clarification on the baseline of operations and aspirations of Club Getaway.

Mr. Wyrick began the conversation by stating that the Commission must put on their planning hat for this discussion because the consequence of adding this definition would apply to the whole rural district. He felt this required a serious discussion before moving forward. Mr. Manes agreed.

Mr. Birnbaum asked what would happen if they leave the use as non-conforming and use the baseline that was provided by the property owner. Ms. Hayes replied that they would be considered pre-existing, non-conforming and would be restricted in any expansion they wanted to do. Mr. Winter believed that the use would still need to be codified in the regulations. Mr. Birnbaum asked if there was any reference to this sort of activity within the POCD and Mr. Winter there was nothing in this rewrite. Mr. Wyrick said that he thought the use should be included with the POCD which would basically afford this use as something approved by the town. Mr. Cherniske said that the Commission has tried to establish baselines in the past which has led to regulations. He would not be willing to say that it was inappropriate on every parcel since we have some pretty intensive one offs throughout the rural zone now. Putting it in the regulations the conditions that we would put on this type of use would solve a lot of problems. He would not say that it was completely inappropriate everywhere. Ms. Casey said that she agrees with Mr. Wyrick and move cautiously and slowly. She does not think the Commission should be in a hurry and would like more time to think about it. Ms. Hicks asked if there would be any control over what is done there should Mr. Schreiber sell the property and feels that a regulation should be included. Mr. Birnbaum reminded the Commission that the owner is before us at our behest.

Mr. Birnbaum stated that he does not have the same history as the other Commission. He said that we already have a rural resort and it seems like the Commission only wants to have one. But what happens if someone comes forward with a similar request since the Commission is okay with this one use. The issue for the Commission can occur if and when a second request comes in.

Mr. Winter suggested that this discussion be tabled until the Commission can have a discussion with Mr. Chalder. Mr. Manes suggested that the information created by Atty. Merriam be provided to Mr. Chalder. Mr. Winter said that he feels that Mr. Schreiber could be able to continue to use the property as it has been used in the past as the Commission continues to sort this out.

Ms. Hicks stated that she feels Kent has always been proud of the history of the camps it has had and wondered if this couldn't be incorporated into that category. Mr. Manes said that what Club Getaway does not fit into the definition of "camps" and it really is a rural resort. He continued that he is proud of what Club Getaway has been doing but wants the Commission to continue the discussion with their eyes wide open.

**TOWN OF KENT PLANNING AND ZONING COMMISSION
REGULAR MEETING MINUTES FOR MARCH 10, 2022**

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Mr. Wyrick said that the POCD does give the Commission cover for what is being done. Mr. Birnbaum said that Club Getaway would have to continue in its current status if the Town did not accept any new regulation that was written and presented during the public hearing process.

Mr. Manes moved to continue this discussion to the next regular meeting. Ms. Casey seconded and the motion carried unanimously.

- 5.B.2.** Modification to Applications #106-18SP and 107-18C, by High Watch Recovery Center, Inc., for 54 Carter Road (Map 14 Block 22 Lot 6); 62 Carter Road (Map 14 Block 22 Lot 7); and the 15.48-acre unimproved parcel of land (Map 14 Block 21 Lot 23, Parcel I.D. #1486) abutting the northerly line of Carter Road and the southeasterly line of 47 Carter Road, for a special permit and site plan approval for the following: Construction of two-story addition (including offices, 218-seat lecture hall and 12-bed detoxification wing) to existing administrative and clinical office building at 62 Carter Road; single story addition and kitchen expansion to dining hall at 62 Carter Road; addition of detoxification service at 62 Carter Road; increase in total residential in-patient bed count from 78 to 90 at 62 Carter Road; conducting therapeutic activities (including temporary housing of staff) associated with the treatment of drug and alcohol addiction at 54 Carter Road; constructing expanded landscaping/vegetative screening, driveway entrance, parking area, retaining wall and stormwater detention basin at 54 Carter Road and 62 Carter Road; constructing new septic system on Parcel I.D. #1486; and associated site work on all three parcels. **Modification to include: operation of an optional and partially subsidized day care to be utilized by its employees at the location formerly known as 54 Carter Road, Map 14 Block 22 Lot 16.**

Ms. Hayes referred the Commission to the letter written by Mr. Jason Perillo withdrawing the modification.

Mr. Manes moved to accept the withdrawal of the modification. Mr. Birnbaum seconded and the motion carried unanimously.

6. NEW BUSINESS:

Mr. Wyrick elevated Mr. Winter to voting status.

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

- 6.A.1.** Changes to Sections 2200, 4000 and 4100 of the Town of Kent Zoning Regulations dated December 7, 2021, with regard to the definition of "restaurant" and the requirements of restaurant outdoor dining.

Mr. Wyrick opened the public hearing at 8:06 p.m. and read the legal notice into the record.

TOWN OF KENT PLANNING AND ZONING COMMISSION REGULAR MEETING MINUTES FOR MARCH 10, 2022

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Mr. Winter moved to close the public hearing at 8:39 p.m. Mr. Birnbaum seconded and the motion carried unanimously.

Mr. Winter moved to make the change to the Town of Kent Planning and Zoning Regulations dated December 7, 2021, as recommended in the documents presented tonight with the change that rather than remove §4131.5 we modify §4131.5. to read: "Outdoor seating for restaurant patrons provided that such seating does not intrude on the sidewalk or other public ways." Mr. Birnbaum seconded. During discussion, it was decided that in addition the following information shall be removed from the proposed Resolution of Approval: "Removal of §4131.5" and "Renumber of §4131.6 to 4131.5". Mr. Birnbaum rescinded his second; Mr. Winter amended his motion; and, Mr. Birnbaum seconded Mr. Winter's amended motion.

A copy of the Resolution of Approval is attached to these minutes.

6.A.2. Discussion and possible decision on the opting out of certain subsections of Public Act 21-29 with regard to accessory apartments and parking requirements for residential uses.

Mr. Wyrick opened the public hearing at 8:47 p.m. and read the legal notice into the record.

Mr. Wyrick advised the Commission that there were two subjects to consider: the opt out of the accessory apartments and the parking requirements for residential uses. The actual opt out will be discussed as one action.

Ms. Hayes explained the reason and process for the opt out and reminded the Commission how the Town handles accessory dwelling units now. Based on what other Towns are doing, Ms. Hayes shared that Salisbury will opt out because the detached accessory dwelling units being built there will never fall within the beliefs of the Desegregate Connecticut legislation. Ms. Hayes continued that Kent is very similar to Salisbury with regard to the size of houses currently being constructed as accessory dwelling units. Ms. Hayes confirmed that the advice to opt out had been given by their attorney, Mike Zizka.

Ms. Karren Garrity said that she does not understand what the Commission is opting out of. Mr. Winter explained that all the documentation was in the public meeting folder. Ms. Garrity asked if this opt out defeat the purpose of them being affordable. Ms. Hayes replied that when you look at the size of the houses that are currently being constructed as accessory dwelling units, there was no way they could be considered affordable because the size of those accessory dwelling units is not regulated by the Commission. If someone wanted to construct a smaller accessory dwelling unit, that would be their choice. Ms. Garrity suggested that the Commission really think about this opt out because there is a housing issue within the Town.

Mr. Winter said that during the rewrite of the regulations the ability construct accessory dwelling units within the Town center was loosened up and easier to obtain. There is a concern with the rural district and he feels that the Commission has carefully considered the regulation for them via the Plan of Conservation and Development and regulation change. Mr. Winter continued that the Commission believes that they are the best group to regulate how accessory dwelling units are constructed within the Town of Kent and he does not believe that the State is in the right position to impose this on all Towns.

**TOWN OF KENT PLANNING AND ZONING COMMISSION
REGULAR MEETING MINUTES FOR MARCH 10, 2022**

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Mr. Justin Potter said that he was in agreement with the opting out of the accessory dwelling units but has a concern with the parking requirement. He feels that the current parking requirements are too stringent and need to be relaxed. Mr. Winter agreed with Mr. Potter and thanked him for his letter and also thanked Kent Affordable Housing for their letter but felt this would be something that should be discussed at a later date. Mr. Potter said that the Commission will have to give their reason for opting out and does not believe that they can do that with the parking. He also questioned the resolution that was created as it referred to the “amendments” which was not provided with the packet.

Ms. Hayes asked Mr. Potter where he saw that a studio apartment required 2.5 parking spaces and he referred her to “multi-family dwellings”. Ms. Hayes replied that the rationale for that decision was the requirement for visitor parking associated with a structure that contains 3 or more units. Mr. Potter said that he does not see the reasoning for it and said that neighboring towns require less. Mr. Winter asked who is to say what is reasonable for the Town: the state or us. He continued that he did not think it was fair for Mr. Potter to come to a meeting with a set of regulations that are not current and without understanding the mechanisms that the Commission has been through over the many years to create the regulations to say that they are not based within reason. Mr. Winter continued that if Mr. Potter was saying that the parking regulations need to be revised, he would agree but as a junior member of the Commission, Mr. Winter believes that they should be the master of their own destiny and we should regulate ourselves. Based on this and the fact that the Town’s land use attorney has advised them to opt out, there would be no reason to convince him to opt in.

Mr. Wyrick said that he would like to revisit the parking as well and liked the analysis that Mr. Potter had presented. Mr. Cheriske said that he felt the letters submitted showed that there are excessive requirements within the Town and also feels it’s smart to be proactive before the State has another opportunity to tell us what to do. With regard to the rationalization for the opt out could the Commission state that they will be revisiting the current parking requirements.

There was a question about where the “amendments” were that Attorney Zizka refers to in the Resolution that was presented.

Mr. Manes said that it would be a full-time job to manage constant changes to the regulations and that the Commission depends on the residents to come forward with proposed changes because the regulations do not work at this point in time. He also said that with regard to the accessory dwelling units, the accessory dwelling units that are currently being proposed are not for rental but for use by family and friends.

Mr. Wyrick asked for more comments from the public. Ms. Garrity reiterated that the Commission needs to look at this more carefully because we are being dismissive and not attending to what the issue is. Ms. Hayes said that the crux of the matter is that the State is basically removing the right of the Planning and Zoning Commission to zone in a manner that is specific to the Town of Kent and in line with why planning and zoning was created in the first place. Mr. Winter asked what is in our regulations that doesn’t satisfy the need for housing in the Town of Kent and he said that he could not come up with anything. Any requirements that are in the regulations currently are in line with the community vision.

Ms. Lisa Wolak stated that she believes the Commission should opt out. The Town should hold some regulatory authority as there is always an opportunity to move forward to make appropriate changes but once the State steps in, that might not be the case. She continued that they moved into Town because they love the way the Town regulates and would love to see that continue and not move to the State. Mr.

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REGULAR MEETING MINUTES FOR MARCH 10, 2022

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Wyrick thanked Ms. Wolak for her comments and said that the Commission is the better arbiter when it comes to the regulations for our Town.

Ms. Hicks said that the Commission had received many thorough presentations regarding this new legislation and is very sorry to hear that it was thought by the general public that the Commission was being rebellious. She believes that it is not bad legislation but that the legislation does not fit Kent and as a member of the Housing Plan Steering Committee she said that Kent will go out of its way to fit all the requirements but they will do with the context of Kent. Ms. Hicks said that what happens in Hartford cannot work here in Kent.

Mr. Birnbaum said that the housing plan is now in the process in drafting and that there will be opportunities for public comments.

With no further public comments, the following motion was made.

Mr. Manes moved to close the public hearing at 9:30 p.m. Mr. Birnbaum seconded and the motion carried unanimously.

Mr. Wyrick read the Resolution and asked the Commission if they wanted to discuss it.

Mr. Manes moved to accept the Resolution as read to have a discussion about it. Ms. Casey seconded.

During discussion, Mr. Birnbaum stated that he did not understand how the Resolution can be accepted without the "proposed amendments" referred to. The Commission agreed and decided that the last paragraph was boilerplate and it should have been removed. Changes were suggested but in the end the Commission decided that Attorney Zizka should review it and it would be discussed further at the next regular meeting.

Mr. Manes withdrew his motion of acceptance and Ms. Casey seconded.

Mr. Manes moved to send the Resolution back to Atty. Zizka for editing the bottom paragraph and the discussion be continued to the next regularly scheduled meeting. Mr. Birnbaum seconded and the motion carried unanimously.

6.B. DISCUSSION AND POSSIBLE DECISION

6.B.1. Review and Approval of the Proposed Five-Year Capital Plan dated February 10, 2022.

Mr. Wyrick reminded the Commission of the fact that they are charged with reviewing those plans presented without discussing the cost of the plans. Ms. Hayes stated that at the last POCD meeting, Mr. Chalder suggested that the Commission comment that the upkeep of the roads should not be something that is used as a sacrificial lamb when money needs to come out of the capital plan. The continued upkeep of the roadways is actually more cost effective than making the large repairs due to delayed maintenance. Mr. Winter agreed with Ms. Hayes.

TOWN OF KENT PLANNING AND ZONING COMMISSION REGULAR MEETING MINUTES FOR MARCH 10, 2022

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Ms. Hayes reminded the Commission that the approval should also include a statement that if the Capital Plan changes after the Commission's approval, that it be returned to them for further approval. Mr. Manes said that the Commission has no idea if the Plan contains the amount that is needed to do the work as listed. Mr. Wyrick stated that it was not the Commission's responsibility and Mr. Birnbaum said that the review should be based on anything that would come before the Commission via 8-24, municipal improvements. Mr. Birnbaum stated that he has questions about improving traffic flow, Park and Recreation programs and their connection to the POCD.

Mr. Winter said that when this was discussed previously, Mr. Osborne was present. He continued that it was a helpful discussion. Mr. Birnbaum asked whether or not the planning aspect should be addressed with regard to future needs. Mr. Winter said that those discussions are included in the POCD. With regard to Route 7, Mr. Winter continued that it is a State highway and Mr. Osborne would not be the one managing the funding for any work.

Mr. Birnbaum asked if the budget has been adjusted due to more extreme weather events. First Selectman Speck replied that it would be a question for Mr. Osborne.

Mr. Manes moved to approve the Proposed Five-Year Capital Plan dated February 10, 2022, with the understanding that if any of the information changes, the revised Plan be resubmitted to the Commission for re-approval. Mr. Birnbaum seconded. During discussion Mr. Winter said that the Town should consider itself lucky to have Mr. Osborne as head of the DPW and as someone who has such a strong commitment to maintaining both the roads and bridges. The motion carried unanimously.

- 6.B.2. Modification to site plan application #62-15C, Arthur H. Howland & Associates, P.C., for Kent Center, LLC, 9 Maple Street, Map 19 Block 42 Lot 35; modification to include new signage for Carol Corey Fine Art at the building known as 6 North Main Street.**

Mr. Winter recused himself from this discussion.

Ms. Hayes explained that this would be new signage for Carol Corey Fine Art and that the signage was similar to what was there originally with the exception of an additional sign to be seen from Fuller Lane. A letter of approval from the Chief Administrative Officer of the Kent Barns was submitted with the application.

Mr. Manes moved to approve Modification to site plan application #62-15C, Arthur H. Howland & Associates, P.C., for Kent Center, LLC, 9 Maple Street, Map 19 Block 42 Lot 35; modification to include new signage for Carol Corey Fine Art at the building known as 6 North Main Street. Mr. Birnbaum seconded and the motion carried unanimously.

- 6.B.3. Application #13-22C, Chris Elkow, Kent Greenhouse & Gardens, for Richard and Rachel Becker, 79 Muller Road, Map 9 Block 22 Lot 136, installation of inground pool in HorizonLine Conservation District.**

Mr. Winter returned to the meeting at this point in the meeting.

Mr. Cherniske recused himself from this discussion.

TOWN OF KENT PLANNING AND ZONING COMMISSION
REGULAR MEETING MINUTES FOR MARCH 10, 2022

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Mr. Elkow was present to address the Commission. He explained that the property owner would like to install an inground pool with lighting. When asked if there would be other lighting, Mr. Elkow replied that there will be landscaping lighting underneath the cap of an 18" high wall around the back of the pool terrace. Mr. Winter inquired whether or not there will be grading and commented that the house is a scare on the hillside and can be seen from Route 7 during the winter and summer months. Mr. Elkow replied that there will be no grading changes and that the pool will be installed into the land on the downhill side of the property and the terrace and small wall will be constructed on the uphill side. There will be a vinyl fence installed to meet the pool code but will not be seen.

Mr. Winter asked if the undercap lighting will be downward facing in nature and Mr. Elkow replied that they will not be installed if the Commission says no.

It was noted that the application states that there will be no lighting and Mr. Elkow said that he would amend the application to include the undercap lighting, 6" long with 1" copper covers. Mr. Wyrick asked if it was a small lumen output and Mr. Elkow said that it was and he shared his screen so that the Commission could see what they would look like. He went on to say that there will be one light every 8" at most. Ms. McAndrew asked how long the wall was and Mr. Elkow replied that it was 52' from the house and will be built 20" from the patio. It was calculated that there would be approximately 8 lights across the retaining wall. Mr. Winter said that he was uncomfortable not knowing how this would look from Route 7 and asked if Mr. Elkow had a plan that shows how it might look with the fence, retaining wall and grading. Mr. Elkow said that they set the pool back as far as they could and said that he could provide a photo from Route 7.

Mr. Manes stated that he would like to see what it would look like from Route 7 at night. Mr. Wyrick agreed. Mr. Elkow said that he would put up the lighting on a temp basis so that the Commission could look at it from Route 7.

Mr. Manes moved to continue Application #13-22C, Chris Elkow, Kent Greenhouse & Gardens, for Richard and Rachel Becker, 79 Muller Road, Map 9 Block 22 Lot 136, installation of inground pool in HorizonLine Conservation District with the condition that any and all lighting be downward facing in nature to the next regular meeting in order to give the Commission a chance to look at the property from Route 7. Mr. Birnbaum seconded and during discussion Mr. Winter asked the applicant to please add the grading to the site plan and provide cut sheets on the lighting for the rock retaining wall. The motion carried unanimously.

7. STAFF REPORT:

8. REPORT OF OFFICERS AND COMMITTEES:

8.A. POCD Subcommittee

Mr. Winter advised the Commission that at the last meeting, it was decided that Mr. Chalder will create a clear and concise document with less pages to present to the Commission before having any type of public informational meeting. The Commission's comments will determine whether or not the information removed needs to be put back in to better represent the subcommittees wishes. It will then be decided when to hold a public informational meeting.

TOWN OF KENT PLANNING AND ZONING COMMISSION REGULAR MEETING MINUTES FOR MARCH 10, 2022

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8.B. Affordable Housing Plan Subcommittee

Mr. Birnbaum reported that the group had a public meeting that was pretty well attending and that some useful information was received from the survey. Currently there is an "employees" survey available for those people who work but do not live in Kent. They are continuing with the actual writing of the plan with a projected completion in the July/August timeframe.

9. OTHER COMMUNICATIONS AND CORRESPONDENCE:

9.A. Administrative Permits and Certificates of Compliance: Feb. 8 to March 7, 2022

Document received. 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.**
- 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.**
- 12. EXECUTIVE SESSION: Pending Litigation: Committee to Protect Rural Kent, LLC, Yewer, Dorothy and Yewer, David vs Town of Kent Planning and Zoning Commission, et al in Superior Court, Judicial District of Litchfield at Torrington dated December 21, 2021.**

Mr. Manes moved to go into executive session at 10:15 p.m. to discuss agenda items 10, 11 and 12 at the same time. Mr. Weingarten seconded and the motion carried unanimously.

The Commission came out of executive session at 10:33 p.m.

- 13. 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. Manes moved to follow the recommendations of the Attorney and have Donna Hayes report back to the Commission as this matter progresses. Mr. Birnbaum seconded and the motion carried unanimously.

- 14. 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. Manes moved to follow the recommendations of the Attorney and have Donna Hayes report back to the Commission as this matter progresses. Mr. Birnbaum seconded and the motion carried unanimously.

TOWN OF KENT PLANNING AND ZONING COMMISSION REGULAR MEETING MINUTES FOR MARCH 10, 2022

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15. Open session involving discussion and possible action on Pending Litigation: Committee to Protect Rural Kent, LLC, Yewer, Dorothy and Yewer, David vs Town of Kent Planning and Zoning Commission, et al in Superior Court, Judicial District of Litchfield at Torrington dated December 21, 2021.

Mr. Manes moved to follow the recommendations of the Attorney and have Donna Hayes report back to the Commission as this matter progresses. Mr. Birnbaum seconded and the motion carried unanimously.

ADJOURNMENT

Respectfully submitted,

Donna M. Hayes

Donna M. Hayes, CZEO
Land Use Administrator

**TOWN OF KENT PLANNING AND ZONING COMMISSION
REGULAR MEETING MINUTES FOR MARCH 10, 2022**

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TOWN OF KENT LAND USE OFFICE

RESOLUTION OF APPROVAL

RESOLVED: That the Kent Planning and Zoning Commission make the following changes to the Town of Kent Planning and Zoning Regulations dated December 7, 2021:

CHANGE TO SECTION 2200 – DEFINITION OF “RESTAURANT”

EXISTING §2200

DEFINITIONS:

RESTAURANT – Establishments that serve food and beverages to customers only when seated at tables or counters, and where at least 50% of the customer seats are located within an enclosed building. Such establishments may include a food take-out service incidental to the primarily permitted use but shall not include establishments where customers are served in motor vehicles or served primarily at food take-out counters.

PROPOSED §2200

DEFINITIONS:

RESTAURANT – Establishments that serve food and beverages to customers only when seated at tables or counters, ~~and where at least 50% of the customer seats are located within an enclosed building.~~ Such establishments may include a food take-out service incidental to the primarily permitted use but shall not include establishments where customers are served in motor vehicles or served primarily at food take-out counters.

CHANGE TO SECTION 4123.2.

EXISTING

§4123.2 Restaurants provided that such establishments shall not serve customers at drive-in windows or in motor vehicles (also see Section 4133 and Section 4134 for accessory outdoor seating)

PROPOSED

§4123.2 Restaurants provided that such establishments shall not serve customers at drive-in windows or in motor vehicles. ~~(also see Section 4133 and Section 4134 for accessory outdoor seating)~~

CHANGE TO SECTION 4131.5

EXISTING

§4131.5 Up to four (4) seats for outdoor seating for restaurant patrons provided that such seating does not intrude on the sidewalk or other public ways (also see Section 4133 for additional outdoor seating).

PROPOSED

§4131.5 ~~Up to four (4) seats for~~ Outdoor seating for restaurant patrons provided that such seating does not intrude on the sidewalk or other public ways. ~~(also see Section 4133 for additional outdoor seating).~~

In addition, the following sections will either be removed and/or renumbered as indicated:

Removal of §4133.3

Removal of §4134.1

Renumber §4134.2 to §4134.1

Renumber §4134.3 to §4134.2

Renumber §4134.4 to §4134.3

Renumber §4134.5 to §4134.4

In adopting the above, the Commission states on its record that, in the Commission's judgement, the proposed amendments satisfy 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 26th day of March, 2022.