

**TOWN OF KENT**  
**PLANNING AND ZONING COMMISSION**  
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BY *Donna M. Hayes*  
TOWN CLERK

**APRIL 28, 2016 SPECIAL MEETING MINUTES**

The Town of Kent Planning and Zoning Commission held a special meeting on Thursday, April 28, 2016 at 7:00 p.m. in the Kent Town Hall.

**1. CALL TO ORDER**

Mr. Johnson called the meeting to order at 7:04 p.m.

**2. ROLL CALL AND APPOINTMENT OF ALTERNATES IF REQUIRED**

Commissioners Present: John Johnson, Chairman; Anne McAndrew, Karen Casey, Darrell Cherniske, Alice Hicks, Adam Manes, Marc Weingarten, Matt Winter

Staff Present: Donna M. Hayes, Land Use Administrator

Mr. Johnson elevated Ms. McAndrew and Mr. Weingarten to voting status.

**3. READING AND APPROVAL OF MINUTES:**

No action taken.

**4. PUBLIC COMMUNICATIONS (ORAL):**

No action taken.

**5. OLD BUSINESS:**

**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.** Application #97-15C, 3 Maple Street, LLC, change of use from retail to restaurant, Map 19 Block 42 Lot 33.

Mr. Manes and Mr. Cherniske recused themselves from this discussion.

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Mr. Johnson read two letters into the record; the first from James Barron and the second from his wife, Jeannette Montgomery Barron. Both letters are attached to these minutes.

Mr. Paul Szymanski, P.E. and President of Arthur H. Howland & Associates, began the discussion by recapping his letter to Mr. Johnson dated April 20, 2016 (copy attached). In it he states that his clients, Kent Center, LLC and 3 Maple Street, LLC, allowed him to voluntarily limit the number of seats and employees at the proposed restaurant at 3 Maple Street to a maximum of 78 seats and 6 employees. This reduction in seats would require a total of 30 parking spaces calculating the parking on use instead of square footage. This new proposal would necessitate the creation of a shared parking agreement between 9 Maple Street and 3 Maple Street allowing 3 Maple Street access to 22 parking spaces on 9 Maple Street as there are currently only 8 parking spaces on 3 Maple Street.

Mr. Johnson asked Ms. Hayes if she was in agreement with the number of spaces and she replied that she and Mr. Szymanski had reconciled the numbers. She explained that there were a total of 90 spaces on 9 Maple Street, 8 spaces on 3 Maple Street and 8 spaces on 10 North Main. Once the spaces were divided out, the use met the requirement in the parking regulations. Mr. Winter asked if that included 10 North Main Street. Ms. Hayes replied that it did not; there is enough parking for the uses on 9 Maple Street and 3 Maple Street. Mr. Johnson asked if that assumed that the Gleason barn would remain empty. Mr. Szymanski replied that at this point in time, the applicants were not dealing with 10 North Main Street and that explanation is on page two of his letter.

Attorney William Manasse then spoke on behalf of his clients, Kent Center, LLC and 3 Maple Street, LLC, stating that the uses and parking on 10 North Main Street would remain as is and would not participate in the shared parking agreement. Mr. Johnson said that he understood but just wanted to clarify where the numbers were coming from.

Mr. Winter began his discussion by reading excerpts from the POCD regarding the need to guide the Town's economic health and better pedestrian and traffic flow. Mr. Winter said that he felt the application that was submitted and approved at the end of last year was a good start to these goals. But, he said that he does not understand how the applicant got around the requirement in the shared parking regulation because in the revised cross easement agreement they have "allocated" parking spaces to the different uses. Atty. Manasse did not agree and said that the owners of 9 Maple Street have the right to "designate" where some of the employees of 3 Maple can park. He said that he "allocated" the spaces and did not "reserve" them. Mr. Weingarten asked if there were any dedicated spaces for the proposed restaurant. Atty. Manasse replied and said that the regulations prohibit the designation of parking spaces. Mr. Weingarten said that those spaces can now be used by the patrons of 9 Maple Street because of the Cross Easement. Mr. Weingarten asked if 3 Maple Street could put up signs and Atty. Manasse said yes. Mr. Weingarten continued that since they were eased, other patrons from 9 Maple Street could use them. Atty. Manasse agreed. Mr. Weingarten said that the allocation of spaces is fiction and Atty. Manasse did not agree. The cross easement said the allocations are "for the purposes of the zoning regulations". He continued that there is no enforceable right by 3 Maple Street to go to 9 Maple Street and ask them to remove their cars because they are allocated to 3 Maple Street. Atty. Manasse agreed but added that right now, they are maxed out with regard to the number of parking spaces required and there could be no expansion of any of the structures on 9 or 3 Maple Street without providing additional parking. He continued that they are not designating specific spaces even though they are required. He continued that the whole purpose of the cross easement is to allow someone who was at 9 Maple Street to walk across the area and get a slice of pizza at 3 Maple Street and not have to move the car.

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Mr. Winter said that the language in the regulation states: "shared parking spaces shall not be reserved for the exclusive use of individuals or groups:". Atty. Manasse said that was the reason why they did not designate any specific parking spaces. All that was added to the Cross Easement was the statement that they have the right to designate employee parking which makes business sense because it allows customers to park in front of the specific business. Mr. Winter says that when he reads this Cross Easement he feels it means that the 8 on 3 Maple and the 22 on 9 Maple are going to be used for 3 Maple. Both Mr. Weingarten and Atty. Manasse disagreed with Mr. Weingarten saying that was where the fiction part of this comes in and Atty. Manasse saying that the reason for the wording is because that is what is required by the regulations. Mr. Winter said that the shared parking agreement regulation says that spaces cannot be reserved. Mr. Szymanski asked that Mr. Winter read the remainder of the sentence which says: "for purposes of compliance with the parking requirements of the Kent Zoning regulations...". Atty. Manasse said that the Cross Easement was "allocating" those parking spaces so that it would be clear that the application was in compliance with the parking regulations. Mr. Winter says that his main problem with the wording is that they are treating the property at 10 North Main Street as the left out step child and that this is not what was required when the site plan applications were approved at the end of last year. He would like to know how many parking spaces are required for the current use of 10 North Main Street. He said that he realizes that this property is pre-existing, non-conforming and that during the application discussion last year, it was discussed that additional parking spaces were going to be created in order to reduce the non-conformity. Mr. Szymanski replied that the only thing that was said was that 6 parking spaces were added, but there was never any discussion about what was going to be required because no uses were changing. Mr. Winter asked again how many spaces were required for 10 North Main. Atty. Manasse replied that since nothing has changed, 8 parking spaces were required and that 10 North Main is a separate tract and is pre-existing, non-conforming. If that property was sold, the cross easement would still be in effect along with 8 parking spaces allocated to them. The cross easement would allow them to drive or walk through the area. Mr. Winter said that it seemed to him that when the 3 separate site plans were approved at the end of last year, they approved them separately at the request of the applicant. Now in terms of parking, they are trying to utilize the parking for 9 and 3 Maple Street and the only way for Mr. Winter to be comfortable is if the applicant re-submitted the site plan for 10 North Main and took that out of the shared parking agreement. Ms. Hayes said that by doing that would prevent patrons from crossing from one piece of property to another and did not address parking. Mr. Winter said that he thought it was also a shared parking agreement. Ms. Hayes said that she did not remember and could get a copy of the approvals. Mr. Winter said that his main concern stems from the fact that some of the business owners do not feel there is enough parking and suggested that this be something that is addressed in the near future. He does not believe that 10 North Main Street should be carved out of this agreement and did not think that they can allocate parking spaces. Ms. Hayes answered Mr. Winter's question about the required parking spaces. She said that if you calculate the parking space required based on square footage, 21.587 spaces would be required. If you calculate it based on use, 41.2 spaces would be required.

Mr. Johnson said that he does not see the problem separating 10 North Main in terms of parking unless last fall was a shared parking agreement. Just because there is a cross easement agreement for access and passage doesn't mean that parking is also shared. Mr. Szymanski commented that since the creation of 10 North Main Street, it has been non-conforming.

Ms. Hayes read an email to Mr. Szymanski dated January 6, 2016 which contained all the motions that were made at the end of last year. According to the email an access and parking agreement needed to be created between all 3 properties. Mr. Winter said that he feels that the condition was assigned because the circulation and the parking for all three of those parcels seem to work in conjunction with each other based on the traffic and pedestrian flow and based on the current uses. Mr. Szymanski said that they would not have met the parking requirement if that was the case. Mr. Winter answered that they were based on the applications, more parking spaces were being added and there was an improvement. Atty. Manasse said that there were no changes in the use and the

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requirement for the additional parking to 10 North Main was not on the table. Ms. Hayes said that the Commission wanted to make sure that the people who were going to 10 North Main could park on 9 Maple and any configuration within all of those parcels. Atty. Manasse said that he was not involved in that conversation and that the creation of the parking spaces was done to show that no parking spaces were going to be lost. He continued that there is no requirement that the parking be increased when there is no change in the use to 10 North Main. Mr. Winter said that the Commission was not asking that the parking be increased. He is objecting to the fact that if the applicant is proposing to utilize all of the parking at 3 Maple and 9 Maple for the uses on 3 Maple and 9 Maple and leaving the parking spaces at 10 North Main which are existing, 10 North Main should be included in the parking agreement. Atty. Manasse asked how Mr. Winter would like to address this. He asked Ms. Hayes if Attorney Zizka had read the agreement. Ms. Hayes responded that he had and did not see anything that was a red flag. Atty. Zizka also asked Ms. Hayes how she felt with the parking agreement. Ms. Hayes responded that she had read it and had no problem with it based on what was being done. Her question was how this new agreement would affect the existing agreements that were already on the land records. Atty. Manasse replied that the existing parking/cross easement agreement between 3 and 9 that goes back to 2004 will be superseded by this agreement. It will also supersede the agreements that were filed with relation to the site plan applications that were filed at the end of last year.

Mr. Winter asked if they were limiting the parking to 8 where before there was shared between the 3 parcels. Atty. Manasse said that if the application does not allocate the parking spaces how would the Commission know that the parking requirement has been met. Mr. Winter said that because there is a shared parking agreement and they would look at the total number of parking spaces there and the total number of parking spaces required. Atty. Manasse said that the parking spaces at 10 North Main would be 8 because that is all there is. He continued that he did not know how to write the easement without allocating the actual number of parking spaces required. If they are not allocated, they have now rendered the other businesses as non-conforming because they have over-parked. Mr. Winter agreed because the use is more intense. Atty. Manasse said that the allocation was done to avoid that issue. Mr. Winter said that he does not agree and thinks that you take the parking spaces as a whole and you calculate the uses on the whole. Mr. Szymanski asked if the Commission would like all three pieces merged. Mr. Winter said no and said that there are parking spaces designated for "shopping center" but there is no use of a "shopping center" in the regulations. He did not know how he can allocate the parking spaces to a use that is not there. Atty. Manasse said that was done 15 years ago. Mr. Winter said that he knows that and realizes that he cannot do anything about that now. But going forward he did not think he could designate any parcel as a "shopping center" unless there is a permitted use. Mr. Szymanski told Mr. Winter that Atty. Zizka's letter was contrary to that thought. Mr. Johnson said that Atty. Zizka said that they "could", but that is not the question tonight. Atty. Manasse said that it might be a good idea to revise the regulations for the future, but right now the Commission said that 3 Maple Street and 10 North Main could not be merged with 9 Maple Street and that the use would have to stand on its own which has been done. Mr. Winter agreed. Atty. Manasse said that he is open to suggestions and does not know how to create the easement so that the applicant is in compliance without allocating the parking. The concern is if someone comes in and wants to open a restaurant on 10 North Main Street and there is no recorded allocation, they would have the right to take up however many parking spaces they would need on 9 Maple Street, those spaces are not there. Mr. Winter said that the Commission would not approve the change of use just like the Commission is debating about whether or not to approve the change of use for 3 Maple Street. Atty. Manasse countered that he feels the Commission has no choice but to approve the change of use for 3 Maple Street because they have complied with the parking requirements for 3 Maple and the parking requirements that are existing for 9 Maple are complied with. The only change on the table is 3 Maple and they have complied with the highest standard in the regulations and left 10 North Main as is. Mr. Winter said that 10 North Main Street is left without the opportunity because a possible owner is now saddled with a piece of property that only has 8 parking spaces. Atty. Manasse agreed.

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Ms. Casey asked what happened with the Kingsley Tavern. She asked how it was approved for 50 seats without not parking requirement. Ms. Hayes replied that the parking was Main Street. Ms. Casey said that they were not required to have allocated spots. Mr. Johnson said that his understanding at the time was that they were granted a variance for parking requirements. Mr. Szymanski said that was not the case and that the variance was for the setbacks. Ms. Hayes agreed and clarified that Mr. Johnson was under the wrong impression when the change of use was granted.

Mr. Winter said that the Commission is allowed to count in at their discretion public parking spaces within 100' of the business and that was done with a recent change of use. Ms. Casey said that a 50 seat restaurant is very intense and that the Commission is spending too much time on something that should be approved. She believes that there are plenty of parking spaces and that taking 10 North Main Street out of the equation should not be an issue for the Commission. Ms. Casey said that she is not following the theory and thinks that they have proven that they have enough parking. Mr. Winter said only because 10 North Main Street has been segregated out of the equation. Ms. Casey asked why the Commission should care and does not know what that has to do with the application before the Commission. Mr. Winter said that they approved 106 parking spaces that were available for use for all of the businesses on 9 Maple, 3 Maple and 10 North Main. Atty. Manasse said that they still are. Mr. Szymanski said that the parking is available to anyone who wants to park there. Ms. Casey said that she feels the Commission is making it more complicated that it needs to be and that the applicant has proven to her that there is enough parking and that this should be approved. Mr. Winter said that he does not know how to better explain what he is thinking. Ms. Casey said that she has read the regulations and understands them.

Mr. Weingarten asked if the Commission was required to approve the application if the applicant has shown that they have enough parking. He wanted to know if it was a discretionary matter. Atty. Manasse replied that if the applicant complies with the regulations, the Commission is required to approve and there is no discretion. Mr. Weingarten said that his concern is that the one and only congested area in the Town is right on the corner and that they are proposing a change from a low intensity use to a high intensity use. Even with enough parking at 9 Maple Street, the use adds materially to the congestion of the intersection. Mr. Weingarten asked Atty. Manasse if he was not allowed to use that fact during his decision making process. Atty. Manasse replied that this application was not a special permit and the use is permitted as of right.

Mr. Johnson said that he would agree with Atty. Manasse on that point but thinks that the cross easement agreement and the shared parking question might be a little sticky. He does agree with Ms. Casey but said that he was still trying to figure out Mr. Winter's questions/concerns. He asked him if it was about the overall effect of approving this or it is a matter of the wording and the ability or lack thereof to separate 10 North Main out. Mr. Winter said that he believes that the Commission's decision to use the shopping center designation to determine the parking at 9 Maple Street and not changing 3 Maple Street to the shopping center designation and utilizing use as the requirement for the parking space determination he believes that the applicant has demonstrated enough parking on the two parcels to permit the change of use. His objections are: 1) the regulations say the applicant cannot allocate the parking spaces and he feels that they have, but Atty. Manasse says they have not because each has a different definition of the word; 2) if the applicant separates 10 North Main out of the equation there will be no allocation of parking spaces to that parcel. He stated that was what he was trying to get to. Ms. Hicks asked if the cross easement forced Atty. Manasse to allocate the parking spaces. Mr. Winter stated that the cross easement allows traffic flow between the three parcels and he thought they needed that for 10 North Main Street. Ms. Szymanski stated that you could go in between 10 North Main and B. Johnstone and exit between the market and the bookstore. He noted that would diminish the traffic flow. He added that they need the traffic flow but if they take that out of the shared parking agreement, it fits in his comfort zone to approve the application. He stated that he did not think there was enough parking there, but the applicant has demonstrated that with those two parcels there is enough and he's okay with that. Mr. Johnson asked if it was a question of wording in the cross

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agreement; the word allocation. Mr. Winter thought that if the Commission found a way not to allocate the spaces and leave the cross easement and took the shared parking out of 10 North Main Street then he thought that would work. Atty. Manasse stated that the agreement, in 10+ years, when they may not be there, someone can look back on the cross easement and see the allocation for spaces for each building/lot. He added that the Commission could see the parking spaces allocation when a change of use may occur in the future. He stated that it is all in the document. Atty. Manasse stated that if the Commission did not like the word allocate, he could change it, but thought that it addresses the concern that everybody is happy here that it addresses the parking requirements. Mr. Johnson noted that he has learned to respect Mr. Winter's attention to detail. He stated that maybe the Planning and Zoning Attorney and Atty. Manasse could hash it out. Ms. Hayes stated that 30 parking spaces, 8 of which are on 3 Maple Street, 22 on 9 Maple Street are allocated to 3 Maple Street for purposes of the parking requirements of the regulations. She added that it clarifies that the applicant has not allocated them for any other reason than to show that they are in compliance with the regulations. She stated that was her interpretation. Ms. Hicks stated that any synonym to allocation that she could think of, sounds worse than the actual word. She added that the chart provided by Ms. Hayes that allocated parking to each building based on use, but that was just to figure out how many parking spaces were needed for the proposal. Ms. Hicks noted that she was thinking out loud and added that if the shared parking agreement confuses her, but if you have the parking spaces for the requirements, you have the parking spaces. Ms. Hicks did understand what Mr. Winter was saying about allocation. Ms. Hayes asked if you could use the wording in the regulations, which states, "a legally enforceable shared parking agreement assuring access to and use of such parking by all parties to such agreement for the term of the approved uses for which the parking is required". Atty. Manasse stated that one of the requirements, and that Atty. Zizka was very concerned about this, that you have to address the issue if the property sells or some portion of it is sold. He added that you have to allocate, or somehow specify the number of spaces that can be utilized by the neighbor on their parking lot. Atty. Manasse added that's the word to use and accomplishes what they are doing. Mr. Johnson suggested that the recorded discussion, minutes and possibly even a motion, would make it pretty clear, what the Commission's intent is, rather than try to rewrite a legal document that Atty. Zizka has looked out. He felt the intent was clear. Mr. Winter asked what would happen if 10 North Main sold and was encumbered by the previous agreement. Atty. Manasse noted that 10 North Main was encumbered by a parking agreement. Atty. Manasse and Mr. Winter discussed the former shared parking agreement for 3 Maple Street. He added that access from 3 Maple was allowed to 10 North Main Street under the previous agreement. Mr. Winter asked if after the new shared agreement, if 10 North Main Street is sold, the agreement goes with the property and Atty. Manasse answered absolutely. Mr. Winter asked if 10 North Main is not tied to the parking of Maple Street properties, then use may not be changed. Mr. Winter said that he does not want 10 North Main stuck out there on its own with only 8 spaces when 42 is required. Atty. Manasse said that it is what it is. Mr. Winter said that there is a shared parking agreement out there which would allow patrons to use parking on 3 and 9 Maple. This cross easement does not allow that to happen. Atty. Manasse said that the vehicular easement would still be in effect. The pending application for 3 Maple Street is based on a per seat basis and the restaurants located on 9 Maple Street are calculated on square footage and the coffee shop on 10 North Main does not comply with any of the regulations; none of this is consistent. Atty. Manasse said that he is open to suggestions on how to handle this without creating more problems than it solves.

Ms. McAndrew said that she is confused about the fact that the parking was assigned for a shopping center, but there is no use. Mr. Winter agreed and said that the only time it is used is within the parking regulations and is not a permitted use anywhere. He questioned how that designation can be assigned to something when it is not a permitted use and that is why the Commission does not have to consider a shopping center even though 9 Maple is considered a shopping center for parking. Ms. McAndrew said that she agrees with Mr. Weingarten that it is creating a very dangerous situation as far as traffic and cars. Since she was not part of the Commission when this was first done, Ms. McAndrew asked if this had ever been discussed. Mr. Winter said that we had discussed a traffic study. Mr. Johnson said that the POCD addresses concepts and gives the Commission direction, where the

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regulations are specific, they take precedence. Atty. Manasse said that the use is permitted as of right and the Commission does not have a provision for traffic studies. In addition, the location is at the intersection of two state highways and DOT controls that. Traffic count is not on the table for the Commission's discussion because this is a site plan application and not a special permit. Mr. Winter asked Share Parking Agreement/Cross Easement would have to be changed if, in the future, 3 Maple Street changed its use from the restaurant to another use. Atty. Manasse replied that it would all depend on whether or not the supplied parking could meet the new use. If it does not, then a revised Agreement would have to be created or other arrangements are made. Mr. Szymanski replied that they would have to remove a part of the building or find more parking.

Mr. Winter said that this would work as long as they do nothing to 10 North Main. Atty. Manasse said that nothing can be done at 10 North Main. If an applicant comes in for a change of use, they would have to meet the parking requirements at that time for that use and if they don't, the Commission can't grant the change of use because there are only 8 spaces allocated for 10 North Main. If the applicant can provide 5 more spaces on 9 Maple that can be allocated to 10 North Main, the agreement would have to be amended. The term "allocation" just freezes a snapshot in time for the uses today.

Mr. Johnson said that Ms. Hayes that this is a site plan approval and the regulations do allow us to require a traffic study if the Commission deems so. He continued that because the Commission is dealing with permitted uses in the business district, it would have to be an extreme need to require that study because they are not simple and are not necessarily done quickly. Mr. Winter said that if the Commission were to require it, it should have been done at the beginning of this process.

Mr. Johnson asked if the Commission was at the point of making a motion and asked if Mr. Winter was getting comfortable with the wording. Mr. Winter replied that he is not sure the Commission should be in the business of revising a legal document and that he was still uncomfortable with the separating out of 10 North Main Street and leaving it out somewhat on its own with the existing 8 spaces only because it suits the needs of the applicant for this particular change of use. Instead of looking at the property as a whole, the Commission is only looking at 2/3. Mr. Johnson said that he thinks it will get complicated again and that he was not sure the Commission could require the applicant to do it any other way. His understanding is that they could deny this application based on what might happen to 10 North Main Street. Mr. Winter said that he thinks it's deeper than that and that the Commission is looking at a piece of it to satisfy the needs of the applicant. He continued that he read the development section of the POCD just to remind himself that the Commission is responsible for creating a vibrant community. He thought that the change in traffic circulation/pedestrian circulation that was proposed and approved at the end of last year was an improvement and that it has somewhat improved and intense use and alleviated some parking and circulation issues on the property. This intensifies the use and Mr. Winter said the was uncomfortable with that. He did say that he thought the applicant met the parking regulations, but is still concerned with the situation left at 10 North Main Street. In answer Mr. Johnson's question, Mr. Winter said that they might be at the point, but he was not ready to make the motion. Mr. Winter said that even with the fact that some businesses will not be open at the same time of the restaurant, he feels that the new use is an intensified use and will increase the congestion. He said that, after this is decided, he would volunteer his time to speak with the business owners to find out what should be done about parking. Ms. Hicks said that this should also be addressed in the regulations.

Ms. Hicks said that the parking numbers match what is required, but what makes her uneasy is where this leaves 10 North Main in the future. She agrees with Mr. Johnson that the bridge will be crossed when they get there, but the Commission knows that they are potentially leaving another problem out there. Mr. Johnson said that he agrees. Atty. Manasse said that to the best of his knowledge, these two properties are the only business properties in the entire business district that comply with the parking requirements. Mr. Johnson said that he feels that the

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Commission has been “nickeled and dimed” but that he does not think the Commission has the authority to require the applicants to look into the future and add more properties to an application. He said that he would like to deal with this application and thinks the records, recordings and minutes and possible wording in a motion make it pretty clear what the intention is. Mr. Johnson said that he is comfortable approving with all of that behind the Commission and does not know if everyone else is or not. He stated that he does not make motions.

Mr. Winter said that he still on the fence and is not sure that he would approve the change of use based on the 10 North Main parking because it seems as if it is carved out. If a way could be found to separate it, that would be better for Mr. Winter. Ms. McAndrew asked if reducing the number of seats would make it easier. Mr. Szymanski replied that they have already reduced it by 30 seats. Mr. Szymanski said that he was confused with Mr. Winter’s comments and asked for clarification. Mr. Winter replied that if the parking was removed from the agreement but remained in the circulation agreement, then he would not have an issue. Mr. Szymanski asked if Atty. Manasse had a problem with that and he said that he guessed he could eliminate the parking part, but they would end up in the exact same place. For clarification, Atty. Manasse said that Mr. Winter would agree to 10 North Main Street not being able to park on the 9 Maple Street property and the vehicular traffic would remain. Atty. Manasse said that would not help because he would still have to allocate the parking. Mr. Winter said that if the parking on 10 North Main is not included at all, then there would be 98 parking spaces for 3 and 9 Maple Street. Atty. Manasse said that they would still need to be allocated because if retail comes in there would be an issue. Mr. Szymanski said that would be in the record. Atty. Manasse said that it would not be on the land records and you do not do a search of the Planning & Zoning minutes. If the allocation is not done and someone buys 3 Maple Street, applies for a change of use and says that they can use the 98 spaces, the Commission has to approve the change of use. Now the rest of the property does not comply with the regulations. All the allocation does is make it clear that whatever is approved, these are the parking requirements that are approved. If a change of use comes in, the parking will have to be addressed. Mr. Winter asked what would happen to B. Johnstone. Ms. Hayes explained that lot line revision was approved combining it with 3 Maple Street but the map was not filed on the land records so the parking is calculated according to the shopping center designation as it is still part of 9 Maple Street. Mr. Winter asked if they planned on filing the map and Mr. Szymanski replied that they are not putting it on the table at this point in time.

Ms. Hayes said that everyone should be on board with the decision and if anyone has questions about this approval or felt that there would be a better way of writing the Cross Easement, the Commission has an extension until May 12<sup>th</sup>. Mr. Winter said that if the rest of the Commission was going to vote yes, he would go along with them. Ms. Hayes said that she would not want Mr. Winter to “go along with it”. She reminded Mr. Winter that he was having a problem with the word “allocated”. Mr. Winter said that at the Commission’s last meeting, they asked the applicant to create a Cross Easement/Shared Parking Agreement and did not say that the Commission had to approve it. He then clarified that he was talking about the agreement from the end of last year.

Mr. Weingarten asked if the new Agreement had been filed and Atty. Manasse said that it was file and Ms. Hayes has a copy. Mr. Johnson asked if there was any way to take 10 North Main Street out of the shared parking agreement. Ms. Hayes replied that she did not know. Atty. Manasse asked for clarification. He asked Mr. Johnson if he was saying that 10 North Main would have pedestrian and traffic rights but would not have the right to park on the other two properties. Mr. Winter said that he did not think so. He continued that the parking of 10 North Main is not addressed. Atty. Manasse said that they would have to give them an easement to park or not to park; they cannot give them the right to park over there without saying to them that there would be a limitation. Mr. Winter said that if you don’t say that 10 North Main does not have the right to park there that the agreement would be silent on that issue. Atty. Manasse said that he could not do that. Mr. Johnson said that the parking on 10 North Main was part of the calculation and Ms. Hayes agreed. The parking calculation was based only on 3 and 9 Maple Street. Mr. Johnson asked if 10 North Main was part of the shared parking agreement from last fall.

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If so, he felt that it should come out. Atty. Manasse said that was a requirement of the last approval. Mr. Szymanski stated that a site plan modification could be submitted where they take 10 North Main Street out of the share parking agreement. Mr. Winter agreed. Mr. Szymanski stated that it could be put on the agenda for the regular meeting of May 12<sup>th</sup>. Mr. Winter said that he felt the issue could be handled via a condition in the approval of the change of use. Ms. Hayes cautioned that one Commissioner had learned that it is not a good idea to put that type of condition on an approval.

Mr. Williams said that he was confused about what Mr. Winter wanted in the cross easement/shared parking agreement. He asked if Mr. Winter wanted 10 North Main taken out of the agreement with regard to parking so that they cannot park at either 3 Maple or 9 Maple. Mr. Winter agreed. Atty. Manasse said that it would have to be stated; it cannot leave it blank because it becomes an encumbrance on the land records. Mr. Winter asked if JP Gifford's Market does not have the right to park to 10 North Main. Atty. Manasse replied that was separate ownership, to which Mr. Winter said this was separate ownership as well. Atty. Manasse replied that JP Gifford's Market is not a party to the agreement. If you want to leave 10 North Main out totally, that's easy because it just becomes an agreement between 3 and 9 Maple, but when you add in you have to specify what they can do. Mr. Johnson said that he does not see a problem with specifying no parking for 10 North Main on 3 and 9 Maple Street. Ms. Casey said that she did not know why they would want to short change that building if you are concerned with economic development of the Village Center. Mr. Johnson said that it seems to him that the Commission cannot say that 10 North Main Street could use some of the parking spaces. It will have to be considered in the future. Mr. Winter said she agreed with Ms. Casey. Ms. Johnson said that people cannot park at Kent Wines and walk down to the Heron Gallery, but they do. Mr. Williams added that patrons of JP Gifford's Market cannot park on 10 North Main but they do. Mr. Johnson said that they are basing parking on the number of seats for the restaurant and the parking on 3 Maple and 9 Maple and not using any of those parking spaces for 10 North Main. Atty. Manasse said that was what the document says already. Ms. Casey agreed.

Mr. Winter agreed and said that if the Commission can convince him that the allocation of the parking spaces in this agreement is not contrary to our regulations, then he feels the change of use should be approved. He still believes that the allocation is contrary to the regulations. Mr. Winter then read the regulation. Mr. Weingarten said that they are not being specifically reserved for the restaurant's use. Ms. Hicks says that it is an unintended consequence based on the word "allocation". Ms. McAndrew said that she was not sure whether or not Mr. Winter was wrong. Mr. Johnson said that he is comfortable that the application meets the requirements of the regulations and that the Commission should approve it. Ms. Hayes said that she understands the word is "allocating" and not "assigning" but now they are allocating where employees can park. She asked how that plays into the total number of parking spaces and how does that effect the whole count. Ms. McAndrew agreed. She did not think that 6 employees for a 78 seat restaurant was enough employees. Ms. Hayes said that she heard from other restaurant owners that was not enough employees. Ms. Hayes asked Atty. Manasse if the employees of 10 North Main and 3 Maple are required to park on 9 Maple, what happens to the spaces that are allocated to 3 Maple St. Atty. Manasse said that he thinks Ms. Hayes would be less than happy if all of the employees of 3 Maple decided to park in front of Giffords. Ms. Hayes said that she is not disputing the right that as the property owner they could do this, she is questioning whether or not there is enough spaces to do this. She understands that the number of spaces for the restaurant include the employees, but said that you have to consider the employees of 10 North Main as well. Atty. Manasse agreed. Mr. Szymanski said that #4 on page 3 can be eliminated from the Cross Easement Agreement. Atty. Manasse said that it was in there for the reason that the owner of 9 Maple will not have control over 3 Maple if the property is sold to someone else. Mr. Szymanski asked that it be eliminated for tonight's discussion and then address it if and when the property is sold. Atty. Manasse said that you cannot force anyone to deal with it then as a condition of sale. Ms. Hayes said that if 10 North Main Street out of the easement, how does it affect item #4. Atty. Manasse said that he would delete the Third Tract from Schedule B. If no spaces are allocated or not permitting 10 North Main to park on 9 Maple he

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TOWN OF KENT PLANNING AND ZONING COMMISSION  
SPECIAL MEETING MINUTES FOR APRIL 28, 2016

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could amend paragraph 4 to delete that clause in so far as it applies to 10 North Main. He would not delete with regard to 3 Maple. Atty. Manasse said that it could be deleted. Ms. Hayes then asked if that makes the situation better or worse.

Mr. Winter said that since Mr. Johnson, Ms. Casey and Mr. Weingarten told him that the shared parking agreement is not in conflict with the regulations, then 10 North Main Street does not have to be taken out of the Shared Parking/Cross Easement agreement. Ms. Hayes said that if 10 North Main Street does not have to come out of the agreement, then paragraph #4 should remain in the agreement.

Mr. Weingarten said that the regulations cannot specifically designate shared parking for a particular user and he does not think the word "allocation" does that. Mr. Winter said that means his objection to the application does not apply.

Ms. Hicks asked if North Main goes back into the agreement, would the parking calculation work. Mr. Winter said that it would and demonstrated that there are enough parking spaces on both 3 and 9 Maple Street and the application is not in conflict with the regulations. Mr. Johnson said that he agrees and it seems that if it does not, the penalty would fall on the property owners, rather than the Commission. If businesses have any challenges with the language, it would be internal and would be up to them to fight each other and not the Commission. If 10 North Main is sold, it would be a legal discussion between them. Mr. Winter said that if the change of use is approved based on what is being submitted, the Commission is accepting the shared parking agreement language as falling within the regulations. Mr. Johnson agreed. Mr. Winter said that his objection was that he did not think they could allocate the parking but Mr. Weingarten, Mr. Johnson and Ms. Casey expressed a different opinion. Ms. Casey said that the agreement simply explains what goes with what property. Mr. Weingarten stated that the word typically used in an allocation of a partnership gain is someone is "allocated 10% of the gain" which does not mean that it is specified.

Mr. Winter just wanted to clarify that his objection was the allocation of the parking as he did not think they were allowed to do that. Atty. Manasse said that he thinks that it has to be done that way.

Mr. Weingarten said that to be clear, he did not think this was in the best interest of Kent, Connecticut. He has no choice to vote in favor in it because they have demonstrated that they have met the parking requirement.

Mr. Johnson agreed and said that was how it appeared to him.

Ms. Hicks said that the Commission has to go according to the regulations and if the parking spaces are there, then there is no choice.

*Mr. Winter moved to approve Application #97-15C, 3 Maple Street, LLC, change of use from retail to restaurant, Map 19 Block 42 Lot 33 based on the Cross Easement Agreement filed on the land records April 21, Book and based on the letter from Arthur Howland Associates dated April 20, 2016 and signed by Paul S. Szymanski, P.E., President. Ms. Casey seconded the motion and the motion carried unanimously.*

Mr. Williams thanked the Commission for their diligence and introduced the restaurateur and new chef, Joel Viehland who also thanked the Commission.

## **6. NEW BUSINESS:**

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

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#### **TOWN OF KENT PLANNING AND ZONING COMMISSION SPECIAL MEETING MINUTES FOR APRIL 28, 2016**

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No action taken.

**6.B. DISCUSSION AND POSSIBLE DECISION**

No action taken.

**7. STAFF REPORT:**

No action taken.

**8. REPORT OF OFFICERS AND COMMITTEES:**

No action taken.

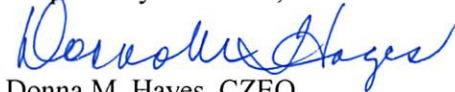
**9. OTHER COMMUNICATIONS AND CORRESPONDENCE:**

No action taken.

**10. ADJOURNMENT**

*Ms. Hicks moved to adjourn at 8:55 p.m. Mr. Weingarten seconded and the motion carried unanimously.*

Respectfully submitted,



Donna M. Hayes, CZEO  
Land Use Administrator

*read into record 4/28/16*

Donna Hayes &lt;landuseadmin@townofkentct.org&gt;

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**zoning on new restaurant, Kent**

1 message

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**james barron** <james@jamesbarronart.com>

Fri, Apr 15, 2016 at 12:11 PM

To: landuse@townofkentct.org

Hi John Johnson,

I am writing to show my support of the new restaurant that is being proposed for the Bull House. I feel the town's businesses will all be aided by a high-quality restaurant, and that the existing restaurants will also gain more business in having Kent as a dining destination. I realize there are concerns with residents. I share their concern that the quality of life in our town to be maintained. I believe the proposed restaurant would no more threaten the town's businesses than Belgique had. I think we all agree that Belgique aided the local economy, and many enjoyed their products.

I am also confident that a parking solution could be reached.

My wife, Jeannette, and I have been South Kent residents for decades and I opened up my gallery, James Barron Art, in September 2015.

All best,

James

--

James Barron

W jamesbarronart.com

M james@jamesbarronart.com

US +1 917 270 8044

*Read into record 4/28/16*

Donna Hayes &lt;landuseadmin@townofkentct.org&gt;

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**Bull house/proposed new restaurant**

1 message

**jeannette montgomery barron** <jmontbarron@gmail.com>

Sat, Apr 16, 2016 at 5:05 PM

To: landuse@townofkentct.org

Dear Mr. Johnson,

Just an email to tell you that I am in support of the proposed new restaurant in Kent. I don't feel that it is a threat to the other restaurants in town but instead think it will bring more people to Kent from surrounding towns which in turn will be good for all of the Kent businesses.

As a bit of background, I have lived in South Kent since 1983 so have seen the town change and grow for many years.

Sincerely,

Jeannette Montgomery Barron

--

Jeannette Montgomery Barron

[www.jeannettemontgomerybarron.com](http://www.jeannettemontgomerybarron.com)



RECEIVED  
4/21/16

JMK

CIVIL ENGINEERS  
LAND SURVEYORS  
SOIL SCIENTISTS  
LAND PLANNERS

April 20, 2016

Mr. John Johnson, Chairman  
Town of Kent Planning & Zoning Commission  
41 Kent Green Boulevard  
Kent, Connecticut 06757

**Re: Application #97-15C, 3 Maple Street, LLC  
Change of Use from Retail to Restaurant**

Dear Mr. Johnson,

This letter is being provided to summarize my statements made at the Public Hearing on April 14, 2016. As you are aware, our proposal is for a change of use for 3 Maple Street from retail to a restaurant.

At the Public Hearing, I voluntarily offered to limit the number of seats and employees to a maximum of 78 seats and 6 employees at 3 Maple Street. This is a significant reduction from our original discussions in January when over 100 seats were proposed.

As you are aware, there are currently 90 parking spaces approved at 9 Maple Street and 8 parking spaces at 3 Maple Street.

Per Section 18.1.3.5 l. of the Zoning Regulations a shopping center requires 1 parking space per 400 square feet of gross floor area. In looking at just 9 Maple Street as a shopping center, 27,157 square feet of gross floor area exist on that property. Based on the requirements, 67.89 parking spaces are required which I rounded up to 68 parking spaces. As 90 spaces are to exist, there are 22 additional spaces at 9 Maple Street than required for the property itself which I proposed to allocate to 3 Maple Street for the restaurant.

Per Section 18.1.3.5 e. of the Zoning Regulations a restaurant requires 1 space for every 3 seats and 2 spaces per 3 employees. Based on 78 seats at 3 Maple Street, 26 parking spaces would be required and based on 6 employees, 4 parking spaces would be required for a total of 30 parking spaces required for the restaurant use. Utilizing the 8 parking spaces in existence at 3 Maple Street and the 22 additional spaces at 9 Maple Street we are able to provide the 30 spaces required.



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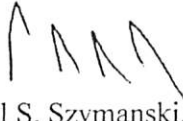
Page 2 of 2

As it relates to 10 North Main Street, we are presently proposing no changes in use to the property. We fully understand that if and when any changes in use are proposed for any of the current uses on that property, that we will be required to come before the Commission similar to how we have for this change of use and demonstrate compliance for that proposed change of use. Further, neither Kent Center, LLC nor 3 Maple Street, LLC are suggesting an intent to abandon any existing nonconforming uses and structures.

If there are any additional questions, please do not hesitate to contact me at (860) 354-9346.

Sincerely,

**Arthur H. Howland & Associates, P.C.**



Paul S. Szymanski, P.E.  
President

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KENT TOWN CLERK

2016 MAY -5 A 9:54

BY



TOWN CLERK