

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

APRIL 14, 2016 REGULAR MEETING MINUTES

The Town of Kent Planning and Zoning Commission held a regular meeting on Thursday, April 14, 2016 at 7:00 p.m. in the Kent Town Hall.

1. CALL TO ORDER

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

2. ROLL CALL AND APPOINTMENT OF ALTERNATES IF REQUIRED

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

Staff Present: Donna Hayes, Land Use Administrator

Mr. Johnson elevated Mr. Chavka to voting status.

Mr. Manes moved to add item 6.B.7. to the agenda. Mr. Cherniske seconded and the motion carried unanimously.

3. READING AND APPROVAL OF MINUTES:

3.A. Regular Meeting Minutes of March 10, 2016

Mr. Winter noted that on page 4 it reads "cut off" and should read "full cut off".

Mr. Johnson noted that on page 2 he would like to add "with input from the applicant" after "next meeting would be discussion by the Commission only".

Mr. Winter moved to approve the Regular Meeting Minutes of March 10, 2016 as corrected. Mr. Cherniske seconded and the motion carried unanimously.

4. PUBLIC COMMUNICATIONS (ORAL):

No action taken.

5. OLD BUSINESS:

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

Messrs. Cherniske and Manes recused themselves from this discussion. Mr. Johnson elevated Ms. McAndrew to voting status.

Mr. Johnson explained that normally, when people have something to say he likes to hear it and they did have the public informational meeting a couple of months ago. This meeting, the Commission has to make a decision and will not be hearing from the audience.

Mr. Johnson read an email dated March 8, 2016 from Dick and Charlotte Lindsey. He also read a letter from Elissa G.T. Potts dated April 14, 2016 and a letter dated April 14, 2016 from Sharon Songal. These letters are attached to the minutes.

Attorney William Manasse reviewed the legal opinion from Michael A. Zizka dated April 6, 2016. He noted that they have tried to address the cross easements situation by recording a cross easement document and submitted it to the office prior to this meeting and believed it addresses all the parking issues Attorney Zizka mentioned. If changes are desired, they are not opposed to that. He then noted that the letters read into the record are not relevant issues, such as access to the restroom. He noted that parking is why they are here today. Mr. Johnson noted that the question is whether it should be considered as one use. Attorney Manasse added that new plans were submitted to open the traffic flow. He stated that his clients comply with the parking regulations of a shopping center and that the Commission, by the opinion of Attorney Zizka, can approve this application. He noted that this Commission approved Kingsley Restaurant in 2007 as a 50 seat restaurant without any on-site parking. He added that surprised him. He noted that his clients are in compliance with the regulations. Health, safety and public welfare is the basis for the Commission's decision. In terms of the number of parking spaces, it's already approved, his clients were not adding any spaces. Employee parking in different sections is common sense so that the employees do not take up the spots for the clients.

Attorney Manasse introduced Attorney Brian Smith with Robinson and Cole law firm. He read a letter into the record. It is attached to these minutes.

Attorney Smith continued to read the letter into the record. Mrs. Hayes noted that the volume # was incorrect in this letter. Attorney Smith noted the change.

Mr. Johnson noted that it had been a while since he read Attorney Zizka's letter in entirety, but Attorney Zizka says it's the Commission's discretion. He added that they don't have a good track record about approving shopping centers and even if the Commission had a shopping center definition, they would still have the discretion to determine whether the parcels would comprise a shopping center.

Attorney Smith noted that they are not arguing Attorney Zizka's letter. What they are saying, that the track record that the Commission does have and particular parcels that they are looking at and the examples he gives, that restaurants may not be included in a shopping center, well, they have already been included already. 9 Maple Street has already been approved as a shopping center that is not architecturally cohesive. The facts are here that support the Commission approving the application because they can rely on the fact that the Commission made

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some decisions about these parcels. Attorney Smith continued by saying that they are not saying that the Commission must approve anything, but they are saying that there are strong arguments to be made and that the Commission would have to find that the land is contiguous to each other, whether or not they are owned by the same entity as long as they have the cross easements. Which is one of the reasons that Attorney Manasse has recorded the cross easement, so the Commission is assured they are going to do that. Those are the reasons, Attorney Smith stated, that support the application and provide the reasons to support an approval.

Mr. Winter noted that was great because the Commission was directed by the applicant, when they met two months ago, that they must approve; Attorney Smith's original letter stated that the Commission should; and Attorney Zizka 's letter states that the Commission has the discretion. Attorney Smith's original letter said it was a forgone conclusion that this must be considered a shopping center.

Attorney Smith stated that the Commission has to make findings of fact. Mr. Winter noted that's what they should do now. He added that the question in his mind was are they allowed to consider it as part of a shopping center or not. He was originally told that they were not allowed to consider it and now they are allowed to. Attorney Smith answered the question by saying that the Commission should weigh the evidence and decide. He is saying the evidence is overwhelmingly there to make the decision to consider it a shopping center. He noted that it would be inconsistent to say restaurants are not allowed under one definition, because the Commission has approved two restaurants in the shopping center before. Mr. Winter stated he would agree with that, but the Commission, he believes, can now begin to discuss whether the Commission should consider all three parcels as a single shopping center. Once they answer that question, they can decide on the change of use.

Mr. Johnson asked the applicant if they had anything else they would like to add.

Mr. Paul Szymanski, P.E. from A.H. Howland and Associates, stated that on page 2 of Attorney Zizka's April 6th letter he does note that one thing is that there is a single architectural cohesiveness with respect to the Center. As the Commission is aware, last fall, the owners of the properties made a multi-million-dollar investment to make the interconnection of the parcels cohesive for vehicles and pedestrians. Mr. Szymanski stated that 9 Maple Street has different architectural elements as well as 3 Maple Street and 10 North Main Street, so it is consistent in that aspect also. He added that Attorney Zizka wrote in his letter that if, in fact, the applicants were proposing a majority of the spaces as restaurants, the Commission could easily not consider it a shopping center due to the fact that they are looking at multiple definitions, the intent of a shopping center is not to have a majority of the uses as a restaurant. Currently when they look at the usage of 9 Maple, approximately 13.6% is utilized as restaurants and with 3 Maple it increases to 19%; it is less than 1/5 of the center as a whole. Mr. Szymanski stated that he is also asking for consistency in treating Doc's and Panini as part of the shopping center. Then Gifford's was then approved in the shopping center. He noted that he is not aware of an instance where the Commission has approved a shopping center that does not have a restaurant. Also, he added, that if you look at 9 Maple, just to be clear, as a shopping center, 1 per 400 s.f., there are almost a couple dozen extra spaces.

Mr. Johnson wanted to review that the application is for a restaurant. Mrs. Hayes noted that it says change of use from retail to proposed restaurant. Mrs. Hayes noted that Attorney Manasse and she were looking at the application and realized the address was incorrect at "3 North Main Street" and she would like to change the address to "3 Maple Street" for the record. Mr. Johnson noted that restaurants are an allowed use in the Village Center Commercial District, but this falls under an interpretation of their parking regulations. He absolutely agrees that architectural design is not an absolute requirement. The Commission already added two buildings to the shopping center that were not part of the original design that would have allowed restaurants. The Commission does not have a shopping center regulation, but the Commission has allowed restaurants under the shopping center parking. Mr. Johnson and Mrs. Hayes discussed the Kent Town Center and whether it was one or two parcels.

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Mr. Winter noted that the Town does not have shopping center regulations. Mr. Johnson noted that he was talking about shopping center parking. Mr. Johnson noted that there are some definitions that support the application and some that may throw up some questions. He noted that he did the "look test". Anything that he looked at that says shopping center looks like a cohesive unit with parking off the public street, not dependent on public parking, intended to be internally, self-fulfilling as far as parking goes, with parking evenly spaced around each building for each use. And again, he added that it should not depend or impinge on public parking. Mr. Johnson noted that the location of the two properties on Main Street, it seems to him that the parking design would rely rather heavily on Main Street parking. He noted that it was not necessarily good or bad, but something the Commission should discuss. If the Commission applies the shopping center designation to these 2 properties, then any use within the Village Center Commercial could go in any of those buildings. He added that he is wrestling with that and what could happen down the road. He added a lot has been done to make the traffic flow, to manage them along with the barn shops, but the fact that they are on Main Street, if the Commission were to allow the shopping center parking to those parcels, he was still wrestling with it. He noted that he is still not sure where he comes down on the issue.

Mr. Szymanski stated that they are not asking to utilize Main Street parking. They meet the regulations with on-site parking.

Attorney Manasse stated that the parking plan as proposed works quite well. If the Commission says you cannot use the parking at 9 Maple Street to offset 10 North Main Street, what would be done? He thinks it is in the Town's best interest to allow the existing, pre-existing, non-conforming spaces to be dismissed and utilize the shared parking on 9 Maple Street.

Mr. Johnson noted that the parking plan approved allows the properties to utilize other property's parking. They are looking at combining the two properties into a shopping center parking requirement.

Mr. Winter noted that Attorney Manasse said that they would not allow the shared parking, the Commission wants the shared parking. The question is changing the use and allowing the parking designation for the extra two lots. It's not the shared parking agreement, it's the actual parking.

Attorney Manasse stated that if 10 North Main and 3 Maple are not part of the shopping center and have their own requirements, and they have their own independent parking requirements, then that prevents 9 Maple Street from being able to share the parking, because they would use all the excess parking in 9 Maple Street. He said there is a lot at stake here from a common scheme, it allows the whole thing to meld nicely together.

Mr. Winter said that the shared parking plan was already approved and that Attorney Manasse cannot take that back. Attorney Manasse stated that it shows on paper and at that time they did not have the shared cross easement agreement. Mrs. Hayes noted that it was a requirement.

Mr. Johnson noted that if the Commission applies the shopping center requirement to the other two properties, they lose control over what goes in those buildings other than the approved uses in the village center. He added that it makes him feel uneasy. He fully realizes that there is an argument to be made that competition is good and that people will find a place to park and walk if they need to. But he still thought that there is a potential impact on Main Street and it's worthy of the Commission's discussion.

Attorney Manasse noted that this proposal alleviates parking problems with 3 Maple and 10 North Main Street as they currently exist. Under the Commission's regulations, the issue, as they presently exist, the failure to allow this to be a single entity, per purpose of shopping center, does not prohibit the restaurant use, for example, in 3 Maple, it's just that the shared parking agreement will just utilize more of what the applicant has available at 9

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Maple Street. They are proposing 22 additional spaces on 9 Maple plus the 8 that exists on 3 Maple. So, even if they came in with that...

Mr. Johnson interrupted by asking why the applicant is asking the Commission for a shopping center designation for these lots if they do not leave it.

Attorney Manasse said that their preference is not to utilize the excess parking on 9 Maple Street for the restaurant because a lot of that excess parking are businesses that do not coincide with the usual operation hours of a restaurant. There's going to be some cross, there's no question, but the physicians are typically not open on the weekend. He added that Cramer and Anderson is not open on the weekends. So, it's one of the reasons the Commission adopted a 400 s.f. requirement for shopping centers, because there is usually an overlap of businesses. He added that the Kent Green was 2 parcels.

Mr. Johnson noted that the non-competing hours is a reason to have shopping center requirements. He noted that again, they are not just talking about a restaurant, if they give up control of the uses on the buildings on Main Street, he is having trouble foreseeing the possible ramifications of that. He stated that it's the Commission's discretion whether the regulation gets applied to that property. Under normal circumstances, the use has to have the parking allotted to it. The Commission is being asked for an unusual consideration here.

Mr. Szymanski noted that if the Commission was worried about 10 North Main Street changing uses, the applicant would propose to remove 10 North Main Street from the shopping center designation and only include 3 and 9 Maple Street. Then there is no concern because then the applicant will not be coming back with higher intensive uses on 10 North Main Street.

Mrs. Hayes noted that Mr. Szymanski had made a comment before about the approvals of the site plan that came in earlier in the year, one of the things they did was eliminate 10 North Main Street from the alternative signage program.

Ms. Hicks, noted that during that entire period, the words "shopping center" were never mentioned relative to this property. She added that in the 5 years she has been on this Commission, they have never discussed shopping centers in town. She noted that the definition of shopping center is very vague. They could call the entire town a shopping center. She added that she agreed with Mr. Johnson about what a shopping center should look like. She added that as a Commission, they cannot forget that they are Commissioners of the Planning and Zoning Commission and if you go through the POCD, the main emphasis was about the rural character of the Town. She added that she read the POCD trying to come up with what a shopping center should be in the town of Kent. She noted that she is still undecided. She added that the Commission is setting a precedent by making this decision.

Attorney Manasse stated that when the Kent Barns was approved in 2000, the parking requirement, and it's in the Commission's minutes, they discussed the issue of the parking requirement with so many spaces, if it was not a shopping center, and so many other spaces to be a shopping center and what was selected was the number of spaces in a shopping center. He added that they did not state that, but it's insinuated.

Mrs. Hayes added that Mr. Preston did not know who would be going in the buildings, so how do you determine how many spaces are needed.

Mrs. Kapetanopolos tried to speak and Mr. Johnson stated that she could not.

Mr. Johnson asked if the businesses at 3 Maple and 10 North Main Street have keys to the restrooms. Mr. Hiram Williams noted that they do not need keys because they have their own bathrooms. Mr. Johnson noted that he did

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not think they were supposed to be public restrooms. Mr. Williams noted that they have 3 tenants at 9 Maple that need a key to the restrooms.

Mr. Johnson stated that he would like to have a discussion among the Commission.

Mr. Winter noted that he has several questions and comments, but he agreed that there are certain things to talk about without being interrupted. He stated that the Commission has the discretion to decide whether to include 3 Maple and 10 North Main into what is being called a shopping center at 9 Maple Street. He would like to go back to 2000 when 9 Maple Street was approved and asked what was written on the application; he wondered if the application was for a shopping center or was it an application for a group of buildings. He added that his point is that they have a shopping center in the parking requirements but not as a permitted use in the regulations. How can the Commission approve a shopping center if it's not a permitted use? If the Commission has to use the designation, are you allowed to have a shopping center in the residential district? What are the ramifications?

Mr. Johnson tried to explain how the Commission would interpret the approval of shopping center parking.

Ms. Hicks stated that as opposed to approving a shopping center, they are just designating the number of parking spaces as a shopping center.

Ms. Casey stated that months ago, it was decided there was not enough parking to change the use to a restaurant. In the following meeting that's when shopping center came into play and they are trying to define it to accommodate their parking. She added that her point was that shopping center was not discussed from day one. Mr. Johnson noted that he agreed.

Mr. Winter noted that when the Commission approved the 3 separate site plans in October, they never talked about the shopping center. The fact that the Commission used the shopping center designation to approve 9 Maple Street was news to him recently. He added that when the 3 separate site plans were approved that the uses were separate uses.

Mr. Chavka noted that the shopping center was never mentioned in the original application site plan. It was brought back to the Commission and he did not know how it's addressed since there is no designation in the actual regulations. He added that he has a concern about the parking and congestion as well.

Ms. Casey stated she personally thought that the Commission is in a situation where they can't see the trees through the forest. She understands the concern with the regulations, however, there are already 3 shopping centers in Kent. The Kent Green, the Town Center and the Barns. The fact that the Commission's regulations has not defined the definition of a shopping center, they exist in this town. She noted that she agreed with Ms. Hicks that they do not want a suburban shopping center. She stated that as a realtor with a real estate license, she sees them as a shopping center. She added that she personally felt that the applicant has showed that they have enough parking to be able to have a restaurant there. She added that she was not on the Board when Kingsley Tavern was approved. Where was their parking?

Mr. Johnson noted that they were granted a variance many years ago. Mrs. Hayes noted that the variance was for the access aisle and buffer. It was not a variance for the number of parking spaces but for the configuration for the parking.

Ms. Casey stated that they are running a 50 seat restaurant. If that was approved, now the Commission is going to tell an applicant that has parking and the ability to share parking, no. She understood that the Commission has to regulate this, but felt they were getting caught up on the stigma of a shopping center. The Commission should be proud that the town has 3 shopping centers.

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Mr. Winter said that it's great to say they are shopping centers and they are well designed, but the Commission is bound by the regulations and they are asking for two more properties to be part of the shopping center. He added that the semantics, whether you call it a shopping center or not, doesn't matter, but according to our regulations, it's not a shopping center.

Ms. Casey stated that in her opinion, this application should be approved.

Mr. Winter stated that there is adequate parking at the Kent Green and at the Kent Town Center, but based on the use, even if a restaurant went in, there would probably be adequate parking because the shops close and there's a lot of parking at the end of the day. When the Commission approved the 3 separate site plans, they were talking about the uses as they stood. Now they are talking about a restaurant and felt there is not enough parking.

Ms. Casey noted that the Commission allowed Kingsley Tavern without parking.

Mr. Winter stated that he wants the commission to decide whether they are going to consider all three parcels as a shopping center.

Ms. Casey asked what they would call the Kent Green? It's a shopping center.

Mr. Winter noted that it's not in the regulations.

Ms. Casey stated that the regulations need to be changed. There are already shopping centers in Kent, whether they are called that or not and there is a restaurant in town without any parking that was approved.

Mr. Johnson stated that working from memory, he believed that he was under the impression that the variance included parking. He added that apparently that's not true. He noted that the Commission has been known to make mistakes. Mr. Johnson noted that he had been looking at Kingsley in town on Friday and Saturday evenings and people seem to find a place to park. He thought there was an argument to be made that the Commission does not pick winners and losers of businesses. He thought that competition could be good and that another restaurant gives options to diners. He again brought up the ability to have any use in the buildings if the parking is considered under a shopping center being potentially a problem.

Mr. Szymanski asked for a modification to exclude 10 North Main Street. Mr. Johnson stated that he was going there next and hadn't quite processed it yet. Restaurant is obviously mostly evening hours, some afternoons, Saturday and Sunday afternoon has a higher demand. Kingsley seems to work.

Mr. Winter added that they do not know what the configuration of the restaurant is yet. He added that the applicant wanted the Commission to determine whether it was a shopping center before giving the number of seats.

Mr. Winter noted that the Commission has to make that decision first.

Ms. Casey noted that you have to think outside the box or it's not going to work. Mr. Winter noted that he has to follow the regulations. Ms. Hicks noted that we have to follow the regulations. Ms. Casey noted that she felt that they were in compliance with the regulations. Mrs. Hayes noted that if it is part of the shopping center then yes, if not then it does not meet the requirements.

Mr. Szymanski stated that that was incorrect and wanted to address it.

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Mrs. Kapetanopolous tried to speak again and Mr. Johnson noted that the applicant has the right to speak.

Mr. Szymanski noted that he would like to simplify things and exclude 10 North Main Street. He submitted the original project summary. It stated that the parking provides 20% more than required for shopping center. He then explained the minutes of that time. He stated that they acted on the application for a shopping center based on the spaces discussed in the minutes. He added that he wanted to get that into the record.

Mr. Winter noted that what Ms. Hicks was saying was that you did not bring it up in the October application and you did not bring it up in the beginning of this application.

Mr. Szymanski noted that he would explain why. In October, the applicant did not bring it up because when they are looking at shopping center, they are looking at two perspectives. One is from the signage perspective and two is from a parking perspective. They were not changing uses, they were adding parking spaces. Shopping center was not germane to our application in October.

Mr. Szymanski noted that just looking at 9 Maple and 3 Maple, 9 Maple currently provides 90 parking spaces. If they look at the 1 per 400 s.f. based on the s.f. in the plaza that would require 68 parking spaces. So, there are 22 excess parking spaces in 9 Maple. 3 Maple currently has 8 existing parking spaces. If they look at the proposed use of the restaurant in 3 Maple, the maximum number of employees is 6 and by definition that would require 4 parking spaces. That would leave 4 spaces in 3 Maple without seats. With the 9 Maple spaces that leaves 26 spaces. The Commission requires 1 parking space for 3 seats, which would be 26 seats. He noted that they reduced the seats from the beginning of the application.

Ms. Casey asked if they were going to run a 78 seat restaurant with 6 employees. Mr. Szymanski noted that was correct.

Mrs. Hayes and Mr. Szymanski discussed 10 North Main Street and it was noted that they would remain pre-existing, non-conforming.

Mr. Szymanski stated that they were at 120 seats and then 105 and then once the ownership looked through this they were able to decide on 78.

Mr. Winter asked if 10 North Main Street was coming out of the shared parking agreement. Mr. Szymanski noted that they would not. Mr. Winter noted if it's just 3 Maple and 9 Maple, the Commission does not have to consider shopping center. He added that the shared parking including 10 North Main Street would not work because of the number of spaces.

Mr. Szymanski noted that there were spaces in front of the buildings too on Main Street even though they are not supposed to consider those.

Mr. Winter stated that he did not agree with the number of parking spaces required for the uses if they use Mrs. Hayes calculations. Mr. Winter and Mr. Szymanski discussed hours of operation and a demand analysis for the property. Mrs. Hayes noted that it was confusing twisting the uses of the properties.

Mr. Johnson noted that he hoped to make a decision tonight. They still may. He liked the suggestion of taking 10 North Main Street out of the shopping center mix. It seemed to him that, as Ms. Hicks and others had been saying, we need to take another look at those calculations. He stated that he could not make a decision on the application tonight without having Mrs. Hayes review the numbers. Mr. Szymanski noted that he would get the information in writing.

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Mr. Winter stated that he felt more comfortable with the application when removing the shopping center designation for 10 North Main Street. 9 Maple Street would remain under the shopping center and 3 Maple would fall under the restaurant parking requirements. He added that the shopping center definition talked about a common design, but they really did design a common parking distribution in October. He felt that was okay. Mr. Winter noted that he did not want to call it a shopping center.

Mr. Johnson asked Mr. Winter if he would not want to apply the shopping center designation to 3 Maple and 10 North Main Street at all and Mr. Winter stated yes. He thought they could make it work without the shopping center designation. Mr. Johnson noted that there's really no question if they could make the parking work under the current regulations.

Mr. Winter noted that if the parking works out the way Mr. Szymanski says it works out then the change of use meets the regulations.

Mrs. Hayes noted that she would like to get her head wrapped around what just happened.

Mr. Winter stated that it leaves 10 North Main Street with inadequate parking.

Mrs. Hayes stated that the next question that's going to come up is when the Gleason building comes before the Commission, you will see another impact to the parking. It is currently a contractor's office and the applicant has talked about it being retail. Mr. Szymanski fully acknowledged that they would address it in the future.

Attorney Manasse asked if the applicant could continue it to a special meeting in 2 weeks and it gives everyone a little time to amend the application and come up with documentation. The applicant and Mrs. Hayes talked about the timing of the application. Mr. Szymanski noted that he would meet with Mrs. Hayes and provide all the information by next Wednesday. Mrs. Hayes noted that she would like to send Robinson and Coles letter as well as the shared parking agreement based on the fact that 10 North Main Street is out of the shopping complex equation, to Attorney Zizka.

Mr. Winter noted that he thinks it should come out of the shared parking agreement.

Mr. Szymanski thanked the Commission.

Mrs. Hayes noted that she needed a letter from the applicant to extend the application. Attorney Manasse stated that they would extend the application to the next regular meeting, but a possible special meeting beforehand.

Mr. Johnson stated that he was willing to schedule a special meeting for the 28th. The Commission agreed to hold the meeting at 7 p.m. He asked Mrs. Hayes to send out a reminder email.

Mr. Winter moved to accept the applicant's extension to the next regularly scheduled meeting. Ms. Hicks seconded and the motion carried unanimously.

Mr. Winter moved to continue Application #97-15C, 3 Maple Street, LLC, change of use from retail to restaurant, Map 19 Block 42 Lot 33 to a special meeting held on April 28, 2016 or the next regularly scheduled meeting. Ms. Casey seconded and the motion carried unanimously.

Messrs. Cherniske and Manes returned to the meeting. Mr. Johnson elevated Mr. Winter to Chairman status and left the meeting at this point in time.

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Mr. Manes moved to hear items 5.B.2. and 6.B.1. after item 6.B.7. Mr. Cherniske seconded and the motion carried unanimously.

6. NEW BUSINESS:

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

No action taken.

6.B. DISCUSSION AND POSSIBLE DECISION

6.B.2. Modification to Permit #119-05C, Christian Kosmos, 23 Davis Road, inground pool located in the Horizon Line Conservation District, Map 10 Block 23 Lot 2, modification to include relocation of inground pool and moving shed into compliance.

John Blore was present for the application. He explained that they are moving the pool out of the tree line. They would need to remove 4 trees.

Mr. Manes asked for more information on the trees and Mrs. Hayes noted that the trees are not in the Horizonline. She added that this was originally approved in 2005. The pool was never built and the house was sold and would like to relocate the pool. A shed will be moved into compliance with the setback and used for pool equipment. She added that the pool equipment should not be seen from the road so she suggested that they put it behind the shed.

Mr. Blore noted that they would screen it with the shed or plant some evergreens.

Mrs. Hayes asked if any trees were removed to put in the temporary road to move the septic tank. Mr. Blore noted that they did not.

Mr. Cherniske noted that the plan was better now.

Mrs. Hayes asked about lighting. Mr. Blore noted that if they were going to put lighting in the stonewall. Its step lighting that shoots down. They are not asking for anymore lighting.

Mr. Manes moved to approve Modification to Permit #119-05C, Christian Kosmos, 23 Davis Road, inground pool located in the Horizon Line Conservation District, Map 10 Block 23 Lot 2, modification to include relocation of inground pool and moving shed into compliance with the understanding that there will be screening around the pool equipment and any lighting in the pool area be downward facing. Mr. Cherniske seconded and the motion carried unanimously.

6.B.3. Modification to Permit #11-16C, Kent Coffee for Kevin Hart & Quarter Mile Co, LLC, 45 North Main, change of use from bank to coffee/chocolate shop, Map 19 Block 15 Lot 14, modification to include additional parking for outdoor seating.

Sharon Songal was present to represent the application. She stated that they realized that with outdoor seating they would need more parking. She explained the modified plan to the Commission.

Mr. Manes asked about the total seating and Mrs. Songal noted that the plan provides 29 spaces, which is 4 spaces more than what is required.

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Mr. Winter asked about designating the spaces. Mrs. Songal stated that the tenants would choose their own spaces. She added that it was striped already. The gravel will not be striped.

Mrs. Hayes noted that Mrs. Songal needed to use a curb or bollard to prevent cars from running to the seating area.

Ms. McAndrew asked if the seating affected the restrooms and Mrs. Songal stated that it do not.

Mr. Manes moved to approve Modification to Permit #11-16C, Kent Coffee for Kevin Hart & Quarter Mile Co, LLC, 45 North Main, change of use from bank to coffee/chocolate shop, Map 19 Block 15 Lot 14, modification to include additional parking for outdoor seating with the requirements that bollards be placed between the east parking and seating areas, the parking lot contain required striping with the exception of the west side parking area as that will be a gravel base. Mr. Cherniske seconded and the motion carried unanimously.

6.B.4. Application #17-16C, Bill & Johanna Seitz, 39 Kenico Road, installation of 18' x 44' inground pool within Horizonline Conservation District, Map 15 Block 22 Lot 84.

Mrs. Hayes noted that Jim Dobson was present, but then left. She explained that the pool was right in the center of the horizonline, but no trees will be cut down.

Mr. Manes asked about the pool equipment. Mrs. Hayes stated that she could ask Jim Dobson about it.

Mr. Cherniske noted that he was good with the location.

The Commission discussed whether you would be able to see this property from Kenico Road or Rt. 341.

Mr. Manes moved to accept waivers to the following sections: 4.3.1., 4.3.3., 4.3.6., 4.3.8., 4.3.9., 4.3.10., 4.3.11., 4.3.12., 4.3.13., 4.3.14. and 13A4.2. Mr. Cherniske seconded and the motion carried unanimously.

Mr. Manes moved to approve Application #17-16C, Bill & Johanna Seitz, 39 Kenico Road, installation of 18' x 44' inground pool within Horizonline Conservation District, Map 15 Block 22 Lot 84 with the following requirements: that the location of the pool equipment be included on the submitted site plan; that the pool equipment be screened from view; that any and all lighting within the pool area be downward in nature; and, that a revised site plan be submitted to the Torrington Area Health District. Mr. Cherniske seconded and the motion carried unanimously.

6.B.5. Application #19-16C, Vincent W. Forese for Scott Mackesy, 0 Upper Kent Hollow Road, filling operation, Map 16 Block 25 Lot 46.

Vincent W. Forese was present for the application. He explained the site to the Commission and noted that they would be bringing in fill from a separate lot and taking most of it out after the house is done on that separate lot.

Mrs. Hayes showed the plan for the finished product on this property.

Mr. Winter noted that the work being done there was not unsightly.

Mr. Forese noted that he would bring in 4,000 cubic yards and approximately 2,500 cubic yards would be removed.

TOWN OF KENT PLANNING AND ZONING COMMISSION
REGULAR MEETING MINUTES FOR APRIL 14, 2016

These are draft minutes. Corrections may be made by the Commission at the subsequent meeting. Please refer to subsequent meeting minutes for possible corrections and approval of these minutes.

The Commission and Mr. Forese discussed the road and it was noted that Rick Osborne, Road Foreman for the Town of Kent would review the road and get back to Mr. Forese on what would need to be done to fix it.

Mr. Manes moved to approve waivers to the following sections: 4.3.3., 4.3.7., 4.3.8., 4.3.11., 4.3.12., 4.3.13. Ms. Hicks seconded and the motion carried unanimously.

Mr. Manes moved to approve Application #19-16C, Vincent W. Forese for Scott Mackesy, 0 Kent Hollow Road, filling operation, Map 16 Block 25 Lot 46 with the stipulation that if the Kent Highway Dept. decides that road repairs to be done, then Mr. Forese would do them. Mr. Cherniske seconded and the motion carried unanimously.

Mr. Chavka left the meeting at 9:15 p.m.

Mr. Manes moved to hear item 6.B.7. at this point in the meeting. Mr. Cherniske seconded and the motion carried unanimously.

6.B.7. Pre-application discussion, Irvlen Equity, 0 North Main Street, new gallery, Map 19 Block 42 Lot 9.

Ms. McAndrew left the meeting at this point in time.

John Allee was present for the application. He submitted updated plans to the Commission. He explained the plans to the Commission. He noted that he got a favorable response from the Architectural Review Board. The Commission looked at the building renderings. Mr. Allee explained architectural details of the proposal.

Mr. Manes questioned the sign. Mr. Allee noted that they needed to come back for signage approval.

Mrs. Hayes noted that the use requires a special permit. They also discussed parking, needing 21 parking spaces for the use. Landscaping was briefly discussed. They then discussed the ARB review of the application and some of its suggestions.

Mr. Winter asked about loading docks. Mr. Allee explained the loading situation.

Ms. McAndrew noted a sight line issue. It was noted that the DOT would require a sight distance. Lighting would be full cut off and he explained that they have not fully designed a lighting plan. A copy of the new regulations would be sent to Mr. Allee for his review.

They all then discussed the timing of the upcoming meetings. The Commission discussed the art gallery use that is not listed in the regulations. Mrs. Hayes noted that the use would fall under Artist's studio. The building in the back is attached by a covered breezeway and is considered one building. It was something the Commission left up to the applicant to decide before submitting the application.

No action was taken.

**TOWN OF KENT PLANNING AND ZONING COMMISSION
REGULAR MEETING MINUTES FOR APRIL 14, 2016**

These are draft minutes. Corrections may be made by the Commission at the subsequent meeting. Please refer to subsequent meeting minutes for possible corrections and approval of these minutes.

- 6.B.6.** Application #20-16C, Ross Solar Group for DK Geer, LLC, 141 Geer Mountain Road, installation of ground mounted solar array within Horizonline Conservation District, Map 11 Block 40 Lot 47.

Mrs. Hayes noted that it was hard to see this house from road. She noted that they would not be cutting down any trees and that it would not be seen from the road. Commission members agreed that it would not be seen from the road.

Mr. Manes moved to approve Application #20-16C, Ross Solar Group for DK Geer, LLC, 141 Geer Mountain Road, installation of ground mounted solar array within Horizonline Conservation District, Map 11 Block 40 Lot 47. Mr. Cherniske seconded and the motion carried unanimously.

5.B.2. Rewrite of Zoning Regulations

Mrs. Hayes stated that she talked to Attorney Zizka and he has enough time right now to concentrate on the zoning regulations. He noted that it should be a week to 10 days until he gets the Commission his comments.

6.B.1. Approval of the Capital Plan Projects, FY 2017 – 2026.

Mrs. Hayes noted that this needs to be approved at the Board of Finance meeting this month. She noted that the Commission should look at this plan and approve it based on its compliance with the Plan of Conservation and Development.

Mrs. Hayes noted that the Board of Education projects are very expensive. They are proposing a major renovation to the school.

Mr. Winter explained the Capital Plan to the Commission. Mrs. Hayes added to the explanation.

They discussed and reviewed the Capital Plan. They also discussed reviewing the Capital Plan along with the Plan of Conservation and Development.

Ms. Hicks moved to approve the Five Year Capital Plan as submitted to the Commission via a memo dated March 15, 2016. Mr. Cherniske seconded and the motion carried unanimously.

7. STAFF REPORT:

- 7.A. Executive Session. Pending Litigation: Planning & Zoning Commission of the Town of Kent Et Al v. Burt, Kenton L. Et Al, Docket No. LLI-CV-16-6013331-S in Litchfield Superior Court. Discussion of strategy and negotiations with legal counsel.**

Mr. Winter moved to enter into Executive Session. Pending Litigation: Planning & Zoning Commission of the Town of Kent Et Al v. Burt, Kenton L. Et Al, Docket No. LLI-CV-16-6013331-S in Litchfield Superior Court. Discussion of strategy and negotiations with legal counsel at 10:03 p.m. Mr. Manes seconded and the motion carried unanimously.

The Commission came out of Executive Session at 10:21 p.m.

**TOWN OF KENT PLANNING AND ZONING COMMISSION
REGULAR MEETING MINUTES FOR APRIL 14, 2016**

These are draft minutes. Corrections may be made by the Commission at the subsequent meeting. Please refer to subsequent meeting minutes for possible corrections and approval of these minutes.

8. REPORT OF OFFICERS AND COMMITTEES:

No action taken.

9. OTHER COMMUNICATIONS AND CORRESPONDENCE:

9.A. Administrative Permits and Certificates of Compliance

No action taken. Mrs. Hayes noted that it has been pretty quiet with permits.

9.B. Monthly Financials: July 2015 – February 2016

No action taken. Mrs. Hayes noted that the Commission is doing well and may be turning back \$8,000 back to the general fund. The Commission decided that they should put it on the agenda for next month and look into what items may need to be ordered.

9.C. State of Connecticut, Connecticut Siting Council, Ruling on Petition #1216.

No action taken. Mrs. Hayes explained that the Siting Council did a declaratory ruling on this petition. She explained the project and noted that she was satisfied with the proposal.

10. ADJOURNMENT

Mr. Manes moved to adjourn at 10:25 p.m. Mr. Cherniske seconded and the motion carried unanimously.

Respectfully submitted,



Jennifer Calhoun
Land Use Clerk



RECEIVED
3/9/16
mkt

 ORIGINAL

Donna Hayes <landuseadmin@townofkentct.org>

letter to P&Z regarding parking issue in Barns complex

1 message

Charlotte <cpil@snet.net>
To: landuse@townofkentct.org

Tue, Mar 8, 2016 at 5:22 PM

Planning and Zoning Commission,

We are concerned for the effect of future parking in the Barns complex now under consideration by P&Z. We feel that it compromises the welfare of some business owners and their employees based on the designation of parking allotted to them.

We understand that some business owners are concerned about difficulty of receiving deliveries necessary for their businesses because of the new configuration.

Thank you for your attention,
Dick and Charlotte Lindsey

Elissa G. T. Potts
P.O. Box 188
Kent, CT 06757

Received
4/14/16
DMK

Donna

I apologize that I can not there tonight. I have made several copies of this letter for you. If you would be kind enough to read it into the minutes, I would appreciate this.

Thank you

Elissa

Elissa G. T. Potts
P.O. Box 188
Kent, CT 06757

April 14, 2016

Mr. John Johnson
Chairman
Kent Planning and Zoning Commission
41 Kent Green Blvd.
Kent, CT 06757

RE: 3 Maple Street Application 97-15C

Dear Mr. Johnson:

I am concerned that the fundamental principles of the Kent Zoning Regulations may have been overlooked with recent focus on parking ratios, rights of shopping center owners and adequacy of street parking at the vital intersection of Routes 7 and 341.

The stated purpose of the Zoning Regulations in the very first sentence of Section 1.1 Purpose and Authority state that "The purpose and intent of the following regulations are to promote the public health, safety, and welfare of the community. It further states that the regulations are intended to "protect the overcrowding of land."

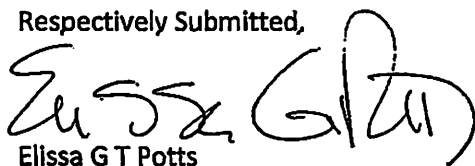
So far, I have not heard anyone on the board, any lawyer, or any other party involved in these hearings look at the application from the point of view of protecting the "public health, safety, and welfare of the community." Don't you think these core principals should be of primary importance when evaluating any application?

While this project may meet the parking ratios outlined for a "shopping center", anyone can look at the parking lot and see that this project is grossly under-parked. There are inadequate access isles and in many areas, no access isles at to aid safe navigation. The public street parking is already overburdened in the area and the shopping complex is virtually empty. Also, evening patrons will be forced to walk across poorly lit roads in almost non-existent crosswalks to get to their cars. It will not be safe.

Any bona fide parking demand survey would tell you this project is a disaster waiting to happen. Has a parking demand survey been required?

Anyway, thank you for your consideration.

Respectively Submitted,



Elissa G T Potts

Fife & Drum Restaurant

April 14, 2016

TO: Planning & Zoning
Kent, CT

Received
4/14/16
DMH

RE: Kent Barn Shops Shopping Center Issue

Thank you for taking the time to read my letter. I am voicing several concerns for the parking issues, public safety and the 2 separate parcels currently housing 5 tenants at 8/10 N Main Street and BJohnstones and the former Kent Pharmacy.

1. Kent Barns management is asking that all staff and owners for all businesses park in the far rear spaces behind the current yarn shop. This puts a burden on the yarn shop as their class and event parking will be completely used all the time and their patrons will have nowhere to park. Having employees and owners for all these businesses parking in the far back is not particularly burdensome for businesses already in the back but is for businesses in the front along Main Street and along Maple Avenue. Safety is the first question brought to mind. Since Kent Barn Shops has stated that the far back area is dangerous due to unsavory persons behind this particular area and they want to put up security fencing to protect the vendors and staff why would this be the best spot for employees and owners to park? The fencing was approved but a nonlocking gate must be installed to accommodate persons walking back and forth which are the very people the current vendors and Barn Shops owners have stated are a potential danger or cause of current fear of harm. It would seem that employees and owners should park near to their business, especially with early open and late close times.
2. Signage/sandwich signs on Main Street: since Kent is in the process of changing it's zoning regarding sandwich signs and outdoor signage, several signs are posted on Main Street, including ours at Kent Coffee & Chocolate. The question here is that since the BJohnstone property is no longer owned by Kent Barn Shops and is now owned by Ann Bass, don't the sandwich and other signage for Kent Barn Shop stores have to be removed to the actual Kent Barn Shop property and not another property owner according to Kent regulations?
3. Lastly, the shopping center issue. My understanding is that the rear, current and legally zoned and acknowledged shopping center formerly owned by Jim Preston and now owned by Hiram Williams and the Kent Barn Shops group are claiming that 8/10 N Main Street is part of the shopping center along with the 2 properties recently acquired by Ann Bass are all part of the shopping center. We all agree that the property designed, built and formerly owned by Jim Preston and now owned by Hiram Williams and group is a legal, designated shopping center. When our building was purchased in June 2014 we were not designated as a part of the Kent Barn Shops according to several conversations with the property managers, Heather & Todd Payne and with Hiram Williams of Kent Center, LLC.

April 14, 2016

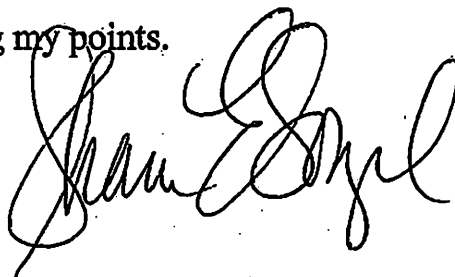
TO: Planning & Zoning
Kent, CT

RE: Kent Barn Shops Shopping Center Issue

4. Cont'd. Over time I asked on several occasions that since we were now owned by Kent Center LLC would we be allowed a key to the restrooms provided for customers of the Kent Barn Shops? I was personally told by Hiram Williams that our building was not a part of the shopping center and thus would not be eligible to have a key to the restrooms and that restroom was for members of the shopping center in back. It has been almost 2 years since the purchase of the building and this seems the clearest statement directly from the Kent Barn Shops owners themselves that our building is not a part of the shopping center. Also of note, Kent Pharmacy was never given keys to those restrooms when the building was purchased and currently BJohnstones does not have keys to those restrooms (I verified this with both businesses).

Thank you for considering my points.

Sincerely,
Sharon Songal
Kent Coffee & Chocolate

A handwritten signature in cursive script, appearing to read "Sharon Songal", written in black ink.

Received
4/14/16
BMS

April 14, 2016

John Johnson, Chairman
Kent Planning & Zoning Commission
Kent Town Offices
P. O. Box 678
Kent, CT 06757

**Re: Response to Letter by Michael Zizka, Esq., Town Attorney as to Robinson & Cole
Opinion Letter to 3 Maple Street, LLC**

Dear Chairman Johnson and Commission Members:

We have reviewed the April 6, 2015 letter submitted by the Commission's attorney, Michael Zizka, Esq., of Murtha Cullina that responds to the March 7, 2016 opinion letter we offered to our client 3 Maple Street, LLC and which it, in turn, submitted to the Commission.

We appreciate the conclusions Attorney Zizka drew stating he agrees with us that the Commission can decide to accept that a combined group of parcels constitute one shopping center despite the various parcels being owned by more than one entity.

Attorney Zizka did take issue with certain other statements made in our opinion letter but we respectfully submit his concerns and issues are easily addressed because of certain facts surrounding the pending application to have 3 Maple Street, 10 North Main Street, and 9 Maple Street combined as one shopping center. Even using the strictest and most conservative approach that he recommends the facts still provide more than adequate grounds for the Commission to find that the proposal to make this one shopping center should be granted.

For example, Attorney Zizka stresses that another dictionary definition of the words "shopping center," as compared to the one we provided in our opinion letter, could be applied. The alternative definition he chose from Dictionary.com "defines a 'shopping center' as a 'group of stores within a single architectural plan, supplying most of the basic shopping needs, especially in suburban areas.' (Emphasis added)." (See Zizka letter at p. 2.)

Attorney Zizka notes that this alternative offers counterpoints to the definition we chose because, to paraphrase his letter: a restaurant is not a store; independently owned parcels may not feature a single architectural plan; and a shopping center may not necessarily include places to dine.

Robinson + Cole

John Johnson, Chairman
Kent Planning & Zoning Commission
April 14, 2016
Page 2

In this instance, however, the Commission has already approved two (2) restaurants as part of the original "shopping center" known as 9 Maple Street. As the applicant will explain it is a given that the original set of buildings were not part of a "single architectural plan." Going by the history of approvals to date, it would be inconsistent for this Commission to now say that, in Kent, restaurants are not to be deemed a possible component of a shopping center or that a shopping center must now be limited to a single architectural plan.

Attorney Zizka also remains unconvinced by what he characterizes as our interpretation of Section 18.1.3.9.d.1 that "a shared parking arrangement" is not necessary between adjacent, but legally separate parcels as long as they have a "unity of ownership." (Zizka letter at p. 3.)

Although we could quibble about what we meant in our opinion letter, 3 Maple Street, LLC and the adjacent landowner, Kent Center, LLC, have instead decided to follow Attorney Zizka's appropriate admonition that "the Commission must insist that proper planning be made for shared parking facilities regardless of who may own the separate parcels in the future. Therefore, a proper arrangement should be established by written documents to be filed on the land records, binding all future owners." (Zizka letter at p. 3.)

Because commissions are not supposed to weigh in on issues of title or condition approvals by requiring certain conveyances, 3 Maple Street, LLC and Kent Center, LLC have executed and recorded the cross easement for 3 Maple Street, 9 Maple Street and 10 North Main Street, (See → Vol. 183 at Pg. 205 of the Kent Land Records) to give the Commission assurance of its willingness to bind itself and future owners to a shared parking arrangement. If, for some reason this particular cross easement needs further refinement, 3 Maple Street, LLC and Kent Center, LLC are ready, willing and able to amend the cross easement so as to satisfy any legitimate concerns the Commission may have.

For all the foregoing reasons, 3 Maple Street, LLC is confident that it has adequately addressed the concerns raised by Attorney Zizka in his April 6 letter and respectfully requests that the Commission grant its application.

Sincerely,



Brian R. Smith

cc: Donna Hayes, Land Use Administrator
3 Maple Street, LLC

RECEIVED FOR RECORD
KENT TOWN CLERK

2016 APR 21 P 12:18



TOWN CLERK