



Town of Westport
Planning and Zoning Commission
Town Hall, 110 Myrtle Avenue
Westport, CT 06880
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Hearing: Oct. 14, 2021

Decision: Nov. 4, 2021

November 5, 2021

Eric Bernheim, Esq.
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315 Post Road West
Westport CT 06880

RE: Text Amend. #800/PZ-21-00600 to 1) Provide Setback and Building Coverage relief for certain Non-Residential Balconies; and 2) Modify how the Planning and Zoning Commission reviews all Coastal Site Plan applications for Non-Residential Activities

Dear Attorney Bernheim:

This is to certify that at a meeting of the Westport Planning and Zoning Commission held on Nov. 4, 2021, it was moved by Mr. Lebowitz and seconded by Ms. Laskin to adopt the following:

RESOLUTION #PZ-21-00600

WHEREAS THE PLANNING AND ZONING COMMISSION met on Nov. 5, 2021 and made the following findings:

Proposal

1. Text Amendment #800 submitted by Attorney Eric Bernheim, FLB Law, proposes to:
 - A. Add and modify definitions and standards in the Zoning Regulations for purposes of providing zoning relief for Setback and Building Coverage requirements; for SOME Non-Residential Balconies using criteria proposed by Attorney Bernheim; and
 - B. Modify in what forum the Planning and Zoning Commission will review ALL coastal site plan applications involving non-residential activities to enable their review during the administrative portion of the Commission's meetings (aka Work Session).

2. A property must meet the following proposed criteria to have a Non-Residential Balcony:
 - a. A Non-Residential Balcony shall be located on a Building adjacent to the Saugatuck River;
 - b. A Building with a Non-Residential Balcony shall be in a non-residential zoning district;
 - c. A Non-Residential Balcony shall be accessed from a door located above the first floor/story;
 - d. A Non-Residential Balcony shall not have a roof;
 - e. A Non-Residential Balcony may not exceed 500 SF;
 - f. A Non-Residential Balcony shall not project more than 10' from the face of the Building; and
 - g. Drainage for a Non-Residential Balcony shall be provided and shall be tied-into a building's stormwater management system.
3. The applicant prepared a list identifying 32 properties meet the criteria.
4. The intended benefits of the amendment are to enhance access to the Saugatuck River, offer opportunities to add architectural interest to non-residential buildings, and facilitate a more expedited coastal site plan review process by allowing such activities to be reviewed during the Commission's administrative portion of their meeting.

Non-Residential Balconies:

Background

5. A balcony is currently computed as Building Coverage as it is attached to a Building. The non-residential zoning districts have Building Coverage, but not Total Coverage limitations. Most non-residential districts are allowed 25% Building Coverage, with others allowing less (20% in the RORD), and others allowing more (75% in the BCD and BCD/H).
6. A balcony must currently comply with Setback requirements for the underlying zoning district where it is located. Setback requirements in the non-residential zoning districts are typically 30' Front; 15' Side; and 25' Rear; measured to the property lines. Setbacks are less restrictive in the Business Center District (BCD) and other zoning districts in Westport Center. §31-7 additionally requires a 25' setback from waterbodies, wetlands, and watercourses for any improvement defined as a Structure in §5-2.
7. Zoning relief for certain architectural features, including balconies, is currently provided only in §24A, General Business District Saugatuck (GBD/S). The GBD/S allows non-residential uses and multi-family uses with a 20% Affordable Housing requirement on sites formerly in the General Business District (GBD) in Saugatuck Center. §24A-6.2 provide Coverage exemptions for open structural projections including balconies, porches, and decks to benefit public access. §24A-4 also allows a 0' side and rear setback for residential patios.

Coastal Site Plan Review of Non-Residential Activities:

Background

8. Currently the Westport Zoning Regulations are NOT in alignment with the state statutes regarding how coastal site plans shall be reviewed by the Planning and Zoning Commission. In 2004 pursuant to Text Amendment #528, the Commission adopted regulations requiring public hearing review of ALL coastal site plan applications rather than limiting the public hearing requirement as authorized by the State Statutes. The change was one of sixty other changes simultaneously made and no rationale was provided in the resolution. CGS §22a-109(e) identifies the Commission is only required to hold public hearings on a Coastal Site Plan for a Shoreline Flood and Erosion Control Structure as defined in CGS §22a-109(c) if requested by the Commissioner of the Department of Energy and Environmental Protection (DEEP), on a case by case basis.
9. In February 2021, the Planning and Zoning Commission adopted Text Amendment #779, authored by the Commission's Process Efficiency Subcommittee, that removed language from §43-5.2 requiring a public hearing for "activities located within the Coastal Boundary;" and replaced it with language requiring a public hearing only for non-residential activities pursuant to §31-10.6 and any Shoreline Flood and Erosion Control Structures as defined in CGS §22a-109(c).
10. The Process Efficiency Subcommittee had focused on residential coastal site plan activities which represent the majority of coastal site plan activities in Westport. The Subcommittee did not address non-residential coastal site plan applications in Text Amendment #779 as so few occur. P&Z staff found in the last 10-years there were seven (7) non-residential applications requiring only coastal site plan approval by the Planning and Zoning Commission.
11. The majority of non-residential applications within the Coastal Area Management (CAM) boundary require Special Permit approval (in addition to coastal site plan approval) pursuant to the Zoning Regulations. CGS §8-3c requires a public hearing for any Special Permit application therefore any application for non-residential activities requiring both Special Permit and Coastal Site Plan approval will be reviewed by the Commission at a public hearing and is NOT part of the applicant's proposal.

Comments Received on the Proposal Prior to the Public Hearing

12. Text Amendment #800 was referred to Town Departments, regional planning agencies, DEEP, and the Architectural Review Board. A press release was also distributed to enhance public participation consistent with guidelines established in 2018 by the Planning and Zoning Commission's Communication Subcommittee.
13. Neither regional planning agency (WestCOG, MetroCOG) identified any concerns.
14. DEEP submitted comments dated 10/6/21 concluding they have no concerns.
15. The following Town departments had no comments: Building, Fire, Parks and Recreation, Police, Public Works, and the Westport Weston Health District.

16. The Town Attorney's Office in comments dated 10/5/21 offered no legal concerns and reminded the Commission they are acting in their legislative authority when reviewing a text amendment providing broad discretion to adopt, deny, or modify the amendment.
17. The Conservation Director in comments dated 9/27/21 expressed concerns, especially for potentially adverse environmental impacts associated with the stormwater runoff from a balcony potentially protruding over tidal wetlands and noted such balconies may be subject to review and approval by the Department of Energy and Environmental Protection (DEEP), or the Conservation Department for work within the Waterway Protection Line Ordinance (WLO) jurisdiction.
18. The Architectural Review Board (ARB) at their 9/28/21 meeting concluded they support the proposal and recommend the zoning relief for a Non-Residential Balcony be limited to one balcony per one façade, per building.

Planning and Zoning (P&Z) Staff Recommendation

19. P&Z staff in a report dated 10/6/21 recommended the applicant address ARB's recommendation with the Planning and Zoning Commission.
20. The 10/6/21 report recommended the Non-Residential Balcony definition in §5-2 be modified to clarify the applicant's intent which in part is allow his client at 33 Riverside Avenue, the demonstration site, to benefit from the amendment. The applicant agreed to the modified definition listed in the attached amendment.
21. P&Z staff described if/when Coastal Site Plan approval is requested from the Planning and Zoning Commission for a Non-Residential Balcony, the Commission may require Public Waterfront Access (PWA) pursuant to §31-10.7.4; thereby enhancing access to the Saugatuck River for the building tenants via the balcony, and for the general public potentially via an easement adjacent to the Saugatuck River.

Public Hearing and Public Participation

22. A public hearing was held to receive testimony from members of the public as required pursuant to State Statutes.
23. The public hearing was held remotely due to COVID-19. The hearing was broadcast "live" on public access television, "live" on-line on the Town's website, and anyone could join the meeting and offer "live" testimony.
24. All application materials, and public comments received in writing prior to the meeting were posted on the Town's website to maintain transparency while conducting remote meetings during COVID-19.
25. At the public hearing, the applicant agreed to additional modifications to match his intent in response to concerns raised by some Commission members including:
 - A. References to setback relief for Non-Residential Balconies should be limited to "rear" setback relief, presumed to be the side facing the Saugatuck River; and

- B. If a limit is imposed on number of Non-Residential Balconies per building that receives Coverage and Setback relief, the applicant agrees to two (2) per building.

NOW THEREFORE, BE IT RESOLVED Text Amendment #800: Appl. #PZ-21-00600 submitted by the Attorney Eric Bernheim is **ADOPTED AS MODIFIED**, to add a new definition for “Non-Residential Balcony” in §5-2 of the Zoning Regulations, that identifies it will be exempt from Setback relief when facing the Saugatuck River, and Coverage requirements if all proposed criteria is met, and to limit to no more than two Non-Residential Balconies per building shall receive the zoning relief; to modify existing definitions in §5-2 to provide the necessary cross-references for the proposed Setback and Coverage relief for “Non-Residential Balconies” including modifying the definitions for “Building;” “Building Area and/or Footprint;” “Coverage, Building;” “Coverage, Total; and “Structure;” to modify §6-2.1.9 to exempt “Non-Residential Balconies” as defined from requiring a variance if/when added to a non-conforming building; to modify §24A-6.2, Coverage Exemptions, to distinguish the proposal from existing standards for residential balconies on buildings in the General Business District/Saugatuck; to modify §31-4, Projections in Setbacks, to add “Non-Residential Balconies” to the list of improvements that may project into certain setbacks; to modify §43-5.2 to allow all non-residential coastal activities to be reviewed by the Planning and Zoning Commission without the requirement for a public hearing, and to add new language in §43-5.2 authorizing the Commission to hold a public hearing on a case by case basis for Coastal Site Plans when they deem necessary. A copy of the text amendment is on file in the Town Clerk’s Office, is on file in the Planning and Zoning Office and is attached.

Modifications

1. The definition for Non-Residential Balcony in §5-2, is modified as agreed to by the applicant to more clearly describe the applicant’s intent.
2. The definition of Non-Residential Balcony is modified as agreed to by the applicant to limit the requested zoning relief to no more than two (2) Non-Residential Balconies per building.
3. References to setback relief for Non-Residential Balconies is refined to limit the relief to “Rear” setback relief, presumed to be the side facing the Saugatuck River or “Side” setback facing the Saugatuck River for those properties that have no “Rear” setback.

Reasons

1. The Planning and Zoning Commission finds the proposal is consistent with the Comprehensive Plan (Zoning Regulations and Zoning Map) and the 2017 *Plan of Conservation and Development* as required pursuant to C.G.S. §8-2, *Regulations*.
2. The Commission also finds the amendment will benefit the Town, pursuant to §42 of the Zoning Regulations.

3. The amendment on Non-Residential Balconies will potentially benefit thirty-two (32) buildings in non-residential zoning districts adjacent to the Saugatuck River consistent with goals listed in the *2017 Plan of Conservation and Development* to increase visual access to the Saugatuck River, while enhancing the overall appearance and function of all buildings and increasing the Grand List.
4. The Commission finds the applicant has incorporated means for mitigating potential environmental impacts into his amendment by requiring stormwater runoff associated with a Non-Residential Balcony be tied into a building's storm management system.
5. Providing some Non-Residential Balconies with zoning relief on properties adjacent to the Saugatuck River is consistent with Chapter 4 of the *2017 Plan of Conservation and Development* that states:

"Protect, preserve, and enhance visual access to (and from) Long Island Sound, the Saugatuck River, Sherwood Mill Pond, and other coastal resource areas." Pg. 32

6. Providing some Non-Residential Balconies with zoning relief is also consistent with Chapter 9 of the *2017 Plan of Conservation and Development* that states:

"Guide business and economic development in Westport so that it is appropriate for the community, enhances community character, and minimizes and potential negative impacts while striving to increase the Grand List." Pg. 73

7. The amendment to change the forum in which the Commission reviews Coastal Site Plan activities for non-residential activities will help facilitate a more streamlined and efficient process for all parties concerned consistent with the Mission Statement of the Commission's Process Efficiency Subcommittee.
8. Streamlining the approval process by removing the public hearing requirement for some activities occurring within the Coastal Boundary will afford an expedited approval process for the affected applicants, the residents of Westport, and may reduce expenses to Westport residents associated with the need to hire consultants and others to present an application at one or more public hearing.
9. Reducing the number of activities that warrant a public hearing for Coastal Site Plan review to Shoreline Flood and Erosion Control Structures is more consistent with the Coastal Management Act.
10. The process changes are consistent with Chapter 6 of the *2017 Plan of Conservation and Development* that cites improving regulatory processes to be an important goal:
'Westport has an incredibly beautiful coastal area, and as a result, considerable pressure for coastal development. An appropriate balance needs to be maintained between protecting coastal resources and managing coastal development.' Pg. 45
11. The Commission is satisfied with the mitigation built-into the applicant's amendment as well as the Commission's procedures that will reduce risk associated with the process change, including:

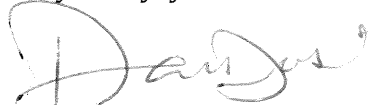
- A. The amendment adds language in §43-5.2 authorizing the Commission to hold a public hearing if there is a scenario in the future involving a coastal site plan application for non-residential activities a majority of the Commission would prefer to review at a public hearing; and
- B. Maintaining the Commission's procedures that require neighboring property owners receive notice of any pending Coastal Site Plan application and informing them how to view the application materials posted on the Town's website, and how to submit correspondence for consideration by the Planning and Zoning Commission.

VOTE:

AYES	-4-	{Dobin, Lebowitz, Laskin, Levey}
NAYS	-2-	{Zucaro, Bolton}
ABSTENTIONS		

The effective date of this amendment is: Nov. 19, 2021.

Very truly yours,



Danielle Dobin, Chairman
Planning & Zoning, Commission

Attached

Text Amendment #800, Adopted as Modified

- cc: Jim Marpe, First Selectman
Alicia Mozian, Conservation Director
Nate Gibbon, Fire Marshal
Donna Douglass, Historic District Commission (*and ARB*) Coordinator
Jen Fava, Parks and Rec. Director
Foti Koskinas, Police Chief
Al D'Amura, Staff Corporal WPD
Matt Mandell, RTM P&Z Committee Chairman
RTM Moderator
Paul Friia, Tax Assessor
Keith Wilberg, Town Engineer
Ira Bloom, Town Attorney
Peter Gelderman, Town Attorney's Office
Nicholas Bamonte, Town Attorney's Office
Eileen Flug, Assistant Town Attorney
James Ezzes, Zoning Board of Appeals Chairman
John Gaucher, DEEP

Text Amendment #800/#PZ-21-00600, Submitted by Attorney Eric Bernheim

Submitted: 8/2/21; Received: 9/2/21

Revised by Applicant: 9/2/21, 9/27/21, and 9/30/21

Public Hearing: 10/14/21

Adopted with Modifications: 11/4/21

Effective date: 11/19/21

Deleted language is [~~struck out and in brackets~~]; New language is underlined.
Modifications in RED, as agreed to by the applicant

FROM CHAPTER 5, Definitions

§5-2 Specific Terms

Non-Residential Balcony:

A platform, located above grade, which is enclosed by a [wall] railing or balustrade, but without a roof, on the outside of a Building located adjacent to the Saugatuck River in a [commercial zone] non-residential district, with building area no larger than 500 square feet and protrudes no further than ten (10) feet from the Building and its drainage must be tied into the Building's storm management system with sufficient capacity to support the Non-Residential Balcony runoff. There shall be no more than two (2) Non-Residential Balconies per building that benefit from the Building Coverage and setback relief referenced in the Structure definition in §5-2.

Building:

A structure having a roof supported by columns or walls along whose outside face can be traced an unbroken line for the complete circumference of the building which is affixed to a lot or lots for the housing or enclosure of persons animals or chattels and shall include each of the independent units into which it is divided by common walls. A building which is connected to a principal building by a carport or garage, or by a porch, breezeway or passageway with a common wall of less than 8 feet in length, shall be deemed to be an accessory building.

Any structure, such as a deck or porch, attached to a building shall be deemed to be part of the building, ~~except for a Non-Residential Balcony [shall not be considered a part of the Building for coverage and setback purposes]~~ as defined in §5-2.

A building which is connected to a principal building by a fully enclosed above ground passageway with a common wall of 8 feet or more in length, and having a finished floor, walls and ceiling shall be deemed to be part of the principal building.

Building Area and/or Footprint

The maximum horizontal cross section area enclosed by and including the outside walls of all buildings and structures on a lot. The projection of entry platforms or steps; cantilevered roofs, eaves, cornices; chimneys; windowsills or sun-shades and similar incidental architectural projections shall not be included within the building area or footprint, provided that such architectural projections shall not extend more than three (3) feet from the building wall or face or more than a distance equal to 20% of the minimum required setback, whichever is less. A Non-Residential Balcony shall not be included within the building area or footprint.

Coverage, Building:

The percentage of a development site in a Non Residence Zoning District, or a lot in a Residence Zoning District, occupied or intended to be occupied by all buildings and structures. Building coverage shall include the building area. No more than 20% of the land covered by waterbodies, water courses, wetlands, and land of severe topography having slopes of twenty five percent (25%) or greater shall be included in the lot area used for computing the maximum allowable building coverage. A Non-Residential Balcony shall not be included within the Building Coverage.

Coverage, Total:

The percentage of a development site in a Non Residence Zoning District, or a lot in a Residence Zoning District, occupied or intended to be occupied by all buildings, structures, parking areas, driveways, swimming pools, tennis courts and similar improvements. Patios and terraces, as defined herein, shall be excluded except if the terrace or patio is 3 feet or more above the adjacent grade at any point, such as with a retaining wall. A Non-Residential Balcony shall be excluded from Total Coverage. Parking on unpaved surfaces provided by places of worship, in excess of the minimum number of parking spaces required by §34-5 of these regulations, shall be excluded. Total coverage shall include one-hundred percent (100%) of the building area and parking areas, driveways, swimming pools, and similar improvements, but only fifty-percent (50%) of a tennis court. No more than 20% of the land covered by water bodies, watercourses, wetlands, and land of severe topography having slopes of twenty five percent (25%) or greater shall be included in the lot area used for computing the maximum allowable total coverage. Calculations shall be made on forms approved by the Planning and Zoning Commission.

Structure:

Anything constructed or erected which requires location on the ground and or/ attachment to or placement on something having a location on the ground. Except as otherwise indicated, "Structures" as used in these regulations shall be deemed to include buildings, parapets, turrets, ground-mounted and roof top mechanical units, swimming pools, tennis courts, towers, paddle or platform tennis courts, balconies, open entries, porches, decks, signs, permanent awnings, ground mounted antennas, ground mounted solar panels, satellite dishes, flagpoles and fences or walls more than eight (8) feet in height and a gas or liquid storage tank that is principally above ground. (See §32-7.4 for rooftop dishes)

Any structure, such as a deck or porch, attached to a building shall be deemed to be part of the building, except for a Non-Residential Balcony.

Ground-mounted mechanical units, such as air conditioning compressors, shall not be deemed structures for purposes of coverage, for permitted uses, (as distinct from special permit uses) in residence districts. Patios or terraces shall not be deemed structures for purposes of coverage but shall adhere to all required setbacks. If the patio/terrace is 3 feet or more above adjacent grade at any point, such as with a retaining wall, it will be included in total coverage. (See patio or terrace definition). Handicapped ramps, platform lifts necessary for ADA compliance and

temporary signs as specified in §33-5 are not considered structures. Access stairs required by a public utility and no larger than 50 square feet are not considered structures. Bus Shelters are not considered structures for purposes of coverage and setbacks. (795, 07/01/2021) A Non-Residential Balcony as defined in §5-2, shall not be considered a structure for purposes of [coverage and setbacks]. Building Coverage. A Non-Residential Balcony as defined in §5-2 shall not be considered a structure when located in the Rear setback facing the Saugatuck River. For those properties that qualify for a Non-Residential Balcony, but have no Rear setback, a Non-Residential Balcony shall not be considered a structure when located in a Side setback facing the Saugatuck River.

An arbor or pergola is considered a structure if it has any type of roof or covering or a deck or patio floor or is over 8 feet in height.

FROM CHAPTER 6, Non-Conforming Building and Lots

§6-2.1.9

The construction of Non-Residential Balconies as defined in §5-2 and as described in the Structure definition [projecting into the setbacks or in excess of coverage] are not considered an expansion, extension, or alteration.

FROM CHAPTER 24A, General Business District/Saugatuck (GBD/S)

§24A-6.2 Coverage Exemptions

The Planning and Zoning Commission may exempt up to an additional minimal amount of coverage associated with open porches, decks, or balconies on residential Buildings and other similar open structural projections from building coverage; provided that such open structural projection will benefit public access, safety or convenience or will further the intent to preserve and/or enhance the historic character and appearance of the area, and at the discretion of the Commission at the time of Special Permit approval on sites that include at least 20% affordable housing.

FROM CHAPTER 31, Regulations Applying to All Districts

§31-4: Projections into Setbacks

The space in any setback shall be open and unobstructed, except for the projection of entry platforms or steps; cantilevered roofs, eaves, cornices; chimneys; windowsills or sun-shades and similar incidental architectural projections, provided that such architectural projections shall not extend more than three (3) feet into the required setback, or more than a distance equal to twenty percent (20%) of the minimum required setback, whichever is less. The projections shall be measured from the building wall or face. The projection of Non-Residential Balconies as defined in §5-2 and as described in the Structure definition shall also be exempted.

FROM CHAPTER 43, Special Permit and/or Site Plan Review Procedures

§43-5.2 Site Plan Review and Hearings

Site Plan approval by the Planning & Zoning Commission shall be required for construction, addition or alteration of a non-residential building involving more than five hundred (500) squarefeet of building coverage or containing more than five hundred (500) sq. ft. of gross interior floorspace, or any of the uses or activities listed below:

1. A Change of Use pursuant to §5-2.
2. [~~Non-residential activities pursuant to §31-10.6 of these regulations and any~~] Shoreline Floodand Erosion Control Structure as defined in CGS §22a-109 located within the Coastal Boundary as described in CGS §22a-94. (779, 03/04/2021)
3. Truck trailer storage for more than 7 days pursuant to §32-8.1.
4. Excavation and fill activities that are not exempt pursuant to §32-8.1.
5. Outdoor Special Events, pursuant to §32-23, that:
 - a. Exceed ten (10) days in duration and are located in a non-residential district.
 - b. Exceed two (2) days in duration and/or extend beyond 10:00pm on Fridays andSaturdays and are located in a residential district.
 - c. Exceed seven (7) days in duration and/or extend beyond 10:00pm on Fridays andSaturdays and are located on a privately-owned property in a residential district containing a Special Permit Use.

The P&Z Commission, at its discretion, may hold a public hearing on an application for Site Plan or Coastal Site Plan review.

The P&Z Director may waive P&Z Commission review of small-scale projects, (except those located in §36, Village District Overlay Zone which require review by the Joint Committee and Site Plan review by the Planning and Zoning Commission), but may require the approval of the Architectural Review Board and will require a zoning permit. Small-scale projects include:

- i. Minor Site Plan modifications such as parking lot alterations or expansions, landscapemodifications and utility modifications;
- ii. Exterior façade changes to commercial buildings;
- iii. Small building additions with fewer than five hundred (500) sq. ft. of building coverage orcontaining fewer than five hundred (500) sq. ft. of gross interior floor space.
- iv. Exterior staircases mandated by the Fire Marshal.
- v. Handicap ramp and elevators mandated by the Building Official for public safety.