

RECEIVED
JUL 16 2024
ZBA

STATEMENT IN SUPPORT OF APPEAL

1. For over one hundred (100) years, a store selling groceries, pantry staples and related items has been located at 222 Hillspoint Road in Westport (the "Subject Property"). The Subject Property has never been used for the sale and on-premises consumption of alcoholic beverages.

2. This is an appeal to the Westport Zoning Board of Appeals (the "Board") pursuant to Sections 8-6 and 8-7 of the Connecticut General Statutes (the "General Statutes"), that has been filed by Joel Z. Green as Attorney and Authorized Agent for 227 Hills LLC of 227 Hillspoint Road, Hillspoint Cove LLC of 223 Hillspoint Road and Ellen Van Dorsten of 216 Hillspoint Road, all in Westport, Connecticut (collectively, the "Appellants").

3. The subject of this appeal is the decision (the "Decision") of Westport Planning and Zoning Director, Mary Young (the "Zoning Official"), on June 17, 2024, to sign the "Liquor Permit Application: Local Official Approval Addendum" submitted by Romanacci Compo LLC (the "Applicant") providing Zoning Authority Approval for a "Restaurant LIR" Liquor Permit for the business located upon the Subject Property, a copy of which is incorporated herein and attached hereto.

4. Pursuant to Section 8-6(a)(1) of the Connecticut General Statutes, the powers and duties of a municipal zoning board of appeals include the power and duty, "[t]o hear and decide appeals where it is alleged that there is an error in any order, requirement or decision made by the official charged with the enforcement of this chapter . . . [.]" General Statutes Section 8-6(a)(1). *See also* Section 46-3.1 of the Westport Zoning Regulations (the "Zoning Regulations").

5. Persons aggrieved by such an order, requirement or decision may appeal within thirty (30) days of actual or constructive notice of the decision, pursuant to Section 8-7 of the Connecticut General Statutes and Section 47-3.1. of the Zoning Regulations.

6. The Appellants are aggrieved by the Decision, on the ground that the Application involves the proposed sale and on-premises consumption of alcohol, and that they own property that abuts and/or is located within one hundred (100') feet of the Subject Property.

7. This appeal was filed by the Appellants within thirty (30) days from June 17, 2024, which was the date of the Decision that is the subject of this appeal.

8. The Decision involved the endorsement by the Zoning Official of Section C of the Application, as follows:

Section C: APPROVAL/CERTIFICATION OF LOCAL OFFICIALS

11. Zoning Authority Approval: I certify that I am familiar with the zoning ordinances and bylaws of the city/town identified in this application and they do not prohibit the sale of alcoholic beverages under the type of liquor permit/establishment identified in this application and/or the entertainment in # 8.	
Signature of Zoning Official X	Mary Young
Print Name	Mary Young
Title of Official	PLANNING & ZONING DIRECTOR
Date	6/17/24

9. Pursuant to the Zoning Regulations and the Westport Zoning Map, the Subject Property is located in the Residence B Zone.

10. The sale of alcoholic liquor is prohibited in all residential zoning districts within the Town of Westport pursuant to the Zoning Regulations, except under specified circumstances which do not apply in this case.

11. For example, the Subject Property is not used for a “Retail Food Establishment” that was legally existing in the Residence B District as of June 3, 2024, for which a permit for the sale of alcoholic liquor for on-premises consumption may be issued pursuant to the recently amended Section 31-9.1 of the Zoning Regulations, nor does any other exception apply.

12. There is also no basis to find that the Subject Property is presently being lawfully used for on-premises consumption of alcohol pursuant to legally existing non-conforming rights which must be permitted to continue pursuant to Section 8-2 of the Connecticut General Statutes and Section 5 of the Zoning Regulations.

13. No special permit and site plan has ever been granted by the Planning and Zoning Commission pursuant to Section 6-1.3 of the Zoning Regulations for a transformation from one non-conforming use of the Subject Property to a new or different non-conforming use.

14. No special permit and site plan has ever been granted by the Planning and Zoning Commission pursuant to Section 6-1.3 of the Zoning Regulations to permit the on-premises consumption of alcohol and/or to operate a Retail Food Establishment.

15. No variances have ever been granted by the Zoning Board of Appeals to permit on-premises consumption of alcohol on the Subject Property and/or to operate a Retail Food Establishment.

16. The Subject Property lacks the required number of off-street parking spaces necessary to use the Subject Property for a Retail Food Establishment or a Restaurant pursuant to Section 16.5 of the Zoning Regulations.

17. The Subject Property also fails to qualify for the proposed “Restaurant (LIR)” Liquor Permit applied for because, pursuant to Section 30-22 of the General Statutes, a qualifying establishment is required to include “seating for at least twenty persons, in the dining room”. Pursuant to the Decision the proposed use shall have “no more than 10 seats”.

18. As noted above, liquor establishments are prohibited in residential zoning districts subject to certain limited exceptions set forth in Section 31-9.1 of the Zoning Regulations that, as recently amended and subject to a pending appeal, provides in relevant part:

31-9 Liquor Establishments

31-9.1 The sale of alcoholic liquor for on-premises consumption shall be limited to Non-Residential Zoning Districts except for . . .

2. Retail Food Establishments existing in the Residence B district as of the adoption of this regulation, June 3, 2024, provided the operator of such Retail Food Establishment may not allow for liquor sales after 9 p.m. and such liquor sales shall not exceed fifty (50%) percent of the total gross sales of such Retail Food Establishment (percentage of gross sales derived from the sale of liquor) to be verified by the operator annually by filing an affidavit with the Planning & Zoning Department . . . [.] (843, 06/17/2024)

19. “Food Establishment Retail” is defined in Section 5 of the Zoning Regulations, as recently amended and subject to a pending appeal, as follows:

§5 DEFINITIONS.

5-2 Specific Terms

Except as otherwise stated, or as the context may otherwise require, the following words, for the purpose of these regulations, shall be defined as follows: . . .

Food Establishment Retail:

A retail food establishment shall mean any business where food or non-alcoholic beverages are sold to the public for either on-premises or off premises consumption and the sale of alcoholic beverages must be for off-premises consumption only, except such establishments that exist in the Residence B district as of the adoption of this regulation, June 3, 2024, may provide alcoholic beverages for on-premise consumption. A retail food establishment may have no more than 10 indoor patron seats. Such establishments shall not be considered Restaurants and no additional parking will be required provided that they have indoor seating for no more than 10 patrons For outdoor seating – See §5-2 & §32-20 Outdoor Eating Areas. (843, 06/17/2024)

20. In contrast, pursuant to Section 5.2 of the Zoning Regulations, a “Restaurant” is defined as being “distinguished from a Retail Food Establishment if it has indoor seating for more than 10 patrons”, and “A Restaurant may have a permit to allow the retail sales of alcoholic liquor to be consumed on the premises, as granted by the Department of Liquor Control.” Moreover, Section 30-22 of the General Statutes permits patrons of Restaurants to take containers of draught beer and partially consumed bottles of wine from a Restaurant for off-premises consumption.

21. Pursuant to Section 14-2 of the Zoning Regulations, permitted uses in the Residence B District include, “Any use permitted in a Residence AAA District, subject to the same approvals and conditions as specified in Section 11-2 of these regulations.”

22. Retail Food Establishments are not a permitted use in a Residence AAA District pursuant to the Zoning Regulations and are, therefore, not a permitted use in a Residence B District.

23. An existing, non-conforming commercial use has operated upon the Subject Property since prior to the adoption of zoning regulations in the Town of Westport which has involved the sale of groceries, pantry staples and related items.

24. Section 5 of the Zoning Regulations defines “Non-Conforming Use” as: “A continuous use of land or of a structure which is currently not a permitted use in the district in which it is located, but which either legally existed at the time these regulations were first established, or which was a permitted use under these regulations prior to their being amended. A use which is permitted by variance shall be deemed a non-conforming use.”

25. Pursuant to Section 6-1.3 of the Zoning Regulations, a non-conforming use may be “transformed into a new or different non-conforming use” by Special Permit and Site Plan Review in certain circumstances, which include that “the new or different use does not constitute the extension or expansion of an old use, or part thereof, on the same lot” but, once again, no special permit and site plan ever been granted by the Westport Planning and Zoning Commission for a transformation from one non-conforming use of the Subject Property to a new or different non-conforming use or for a Retail Food Establishment.

26. Pursuant to the Parking Requirements Table set forth in Section 16.5 of the Zoning Regulations, one (1) parking space is required for every one hundred and eighty (180) feet of gross floor area for retail and service establishments including Retail Food Establishments.

27. The existing building containing the non-conforming use upon the Subject Property consists of 1,424 square feet of floor area with 1,076 square feet of floor area on the first floor and the remaining 348 square feet on the second floor and there are just four (4) permitted parking spaces upon the Subject Property whereas eight (8) spaces are required for a Retail Food Establishment. Based upon the area of the first floor alone, six (6) spaces would be required.

28. For the foregoing reasons, the Zoning Regulations do not permit the use of the Subject Property for a Retail Food Establishment (or a Restaurant) offering the sale of alcoholic beverages for on-premises consumption.

29. The Appellants respectfully submit that the Decision of the Zoning Official was erroneous and must be reversed and this appeal sustained.

STATE OF CONNECTICUT
 DEPARTMENT OF CONSUMER PROTECTION
 Liquor Control Division
 Telephone: (860) 713-6210
 Email: dep.liquorcontrol@ct.gov
 Web Site: www.ct.gov/dcp/liquorcontrol



Instructions: Complete parts A and B and then bring the application to the town offices for the signatures. Then scan the completed and signed document and have that image available on the device you are using to complete the online application.

LIQUOR PERMIT APPLICATION: LOCAL OFFICIAL APPROVAL ADDENDUM

Department of Consumer Protection, 450 Columbus Blvd., Suite 801, Hartford, CT 06103

Section A: PERMIT SELECTION (Select one):

- | | | | |
|---|---|--|---|
| <input type="checkbox"/> Cafe (LCA) | <input type="checkbox"/> Connecticut Craft Cafe (LCR) | <input type="checkbox"/> Nonprofit Public Museum (LPA) | <input checked="" type="checkbox"/> Restaurant (LIR) |
| <input type="checkbox"/> Casino (LCN) | <input type="checkbox"/> Hotel (LH) | <input type="checkbox"/> Nonprofit Theater (LTH) | <input type="checkbox"/> Restaurant Caterer (LRC) |
| <input type="checkbox"/> Club (LIC) | <input type="checkbox"/> Military (LMI) | <input type="checkbox"/> Outdoor Open Air (LSE) | <input type="checkbox"/> Restaurant Wine & Beer (LRW) |
| <input type="checkbox"/> Coliseum (LCM) | <input type="checkbox"/> Nonprofit Club (LPC) | <input type="checkbox"/> Resort (LIC) | <input type="checkbox"/> Tobacco Bar (LCA) |

Section B: BUSINESS INFORMATION

2. Backer Name: <u>Romanucci Comp Beach LLC</u>			
3. Trade Name (DBA Name)			
4. Business Address <u>222 Hillspoint Rd</u>		City <u>Westport</u>	State <u>CT</u>
Zip Code <u>06880</u>			
5. Business Telephone Number	6. Business Fax Number	7. Business Email Address	
8. Type of Live Entertainment: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO (If yes, please check (✓) all that apply below)			
<input type="checkbox"/> Acoustics - (Not Amplified)	<input type="checkbox"/> Concerts	<input type="checkbox"/> Live Bands	<input type="checkbox"/> Comedians
<input type="checkbox"/> Sporting Event(s)	<input type="checkbox"/> Karaoke	<input type="checkbox"/> Plays/Shows	<input type="checkbox"/> Exotic Dancers
		<input type="checkbox"/> Magicians	<input type="checkbox"/> Disc Jockeys
		<input type="checkbox"/> Axe Throwing	
9. <input type="checkbox"/> PATIO/EXTENSION OF USE (Outdoor Service)		10. ACB (Additional Consumer Bar) # of ACB's: _____ (FEE: \$190.00 each)	

Section C: APPROVAL/CERTIFICATION OF LOCAL OFFICIALS

11. Zoning Authority Approval: I certify that I am familiar with the zoning ordinances and bylaws of the city/town identified in this application and they do not prohibit the sale of alcoholic beverages under the type of liquor permit/establishment identified in this application and/or the entertainment in # 8. <u>RETAIL FOOD ESTABLISHMENT, NO MORE THAN 10 SEATS</u>	
Signature of Zoning Official X <u>Mary Y...</u>	Print Name <u>MARY YOUNG</u>
Title of Official <u>PLANNING & ZONING DIRECTOR</u>	Date <u>6/17/24</u>
12. Certification of Town Clerk: The town in which the business identified in this application is to be operated, has no ordinance restricting the hours of sale of alcoholic liquors beyond those set forth in State law except as indicated in the box below. (If none, please enter "NONE") Additional Restrictions: _____ Signature of Town Clerk X _____ Date ____/____/____	
13. Fire Marshal's Approval: I certify that the premises identified in this application and on the sketch of this application is physically constructed in a manner that is safe for the type of business that will be operated there. Signature of Fire Marshal X _____ Print Name _____ Title of Official _____ Date _____	
14. Local Health Approval For Patio: (Need ONLY if premise has an outdoor patio at time of application) I certify that the patio at the premises identified in this application and on the sketch of this application meets local health approval. Signature of Health Official X _____ Print Name _____ Title of Official _____ Date ____/____/____	

