



**Town of Westport
Planning and Zoning Commission**
Town Hall, 110 Myrtle Avenue
Westport, CT 06880

Tel: 203-341-1030 Fax: 203-454-6145 E-mail: PandZ@westportct.gov
www.westportct.gov

Hearings: May 20, 2024 and June 3, 2024

Decision: June 3, 2024

June 4, 2024

Cindy Tyminski, Moon Gardens, LLC

2493 North Benson Road

Fairfield, CT 06824

RE: Text Amend. #843/PZ-24-00197, to modify §31-9, Liquor Establishments, and §5-2, Retail Food Establishments, to allow Liquor Service for on-site consumption at existing Retail Food Establishments located in the Residence B District

Dear Ms. Tyminski:

This is to certify that at a meeting of the Westport Planning and Zoning Commission held on June 3, 2024, it was moved by Mr. Cammeyer and seconded by Mr. Cohn to adopt the following resolution.

RESOLUTION #PZ-24-00197

WHEREAS, THE PLANNING AND ZONING COMMISSION met on June 3, 2024, and made the following findings as listed in the 5/14/24, 5/23/24, 5/31/24, and 6/3/24 staff reports available in the Planning and Zoning Office:

FINDINGS

Background

1. The Liquor Establishment standards in §31-9 of the Zoning Regulations currently limits the sale of liquor for on-site consumption to Restaurants located in non-residence districts only, and is regulated as an Accessory Use.

2. §31-9 currently provides for limited exceptions in residence districts including:
 - A. Special events occurring in any zoning district when a temporary liquor permit is issued by State of CT Liquor Control Authority; and
 - B. Liquor establishments in residence districts that have a valid liquor permit issued by the State of CT Liquor Control Authority prior to 8/9/10.
3. §5 of the Zoning Regulations includes definitions for Retail Food Establishments and Restaurants, and §34-5 contains minimum parking standards for Retail Food Establishments and Restaurants.
4. Zoning standards distinguishing Retail Food Establishments from Restaurants include:
 - A. The number of indoor patron seats allowed (*no more than 10 for Retail Food Establishments, but unlimited for Restaurants subject to providing for the on-site parking demand*);
 - B. The minimum parking standards (*1 space per 180 SF for Retail Food Establishments, 1 per 50 SF for Restaurant Patron Area and 1 per 500 for Restaurant Non-Patron Area*); and
 - C. Allowance to serve alcohol for on-site consumption (*prohibited for Retail Food Establishments but permitted for Restaurants*).

Proposal

5. Cindy Tyminski of Moon Gardens LLC, the applicant, is seeking approval for Text Amendment #843, to modify Zoning Regulation §5-2, Retail Food Establishments, and §31-9.1, Liquor Establishments.
6. Initially the amendment was drafted to allow existing Retail Food Establishments in residential zones to serve alcohol for on-premises consumption. Two potential beneficiaries were identified including the Old Mill Grocery & Deli by Romanacci at 222 Hillspoint Rd. in the Residence B zone, and the Porch at Christie's at 161 Cross Highway in the Residence AA zone.

7. The applicant's initial Explanatory Statement described:

“The proprietors of Romanacci, the tenant/operators of the property, have created a neighborhood market and eatery where one can grab a coffee and breakfast in the morning, have lunch and dinner, buy groceries and various convenience items, all which can be enjoyed either at the market, the beach, or at home. Their vision also includes the market being a place where people can enjoy a casual glass of wine or beer with their food, unwind, and socialize with neighbors.”

8. The text was modified by the applicant on 5/22/24 following the first public hearing to describe potentially benefitting properties as existing Retail Food Establishments in the Residence B zone instead of in any residence zone. The amendment, if adopted, would allow existing Retail Food Establishments in the Residence B zone to serve alcohol to be consumed on-premises with food purchased at the establishment.

9. The targeted beneficiary at 222 Hillspoint Road, Old Mill Grocery & Deli by Romanacci, is the only existing Retail Food Establishment in the Residence B zone.

10. The applicant's supplemental explanatory statement described:

“After taking into consideration the guidance offered by the Planning and Zoning Commissioners at their May 20, 2024, public hearing and being continued to appear again on June 3, 2024, we have revised our proposed Text Amendment to the Westport Regulations to allow existing Retail Food Establishments in the Residence B zone to serve alcohol to be consumed on-premises. The key difference to the initial proposal is the current proposed Text Amendment is that it will benefit only establishments in the Residence B zone.”

11. The text was modified by the applicant for a second time on 5/31/24. Attorney Eric Bernheim, who was added to the applicant's team, submitted a second supplemental explanatory statement describing the primary purpose for the modifications was to add standards to address concerns expressed by some members of the public. Specifically, the revised text included mitigating conditions that:

- A. Prohibit the Retail Food Establishment's sale of alcohol after 9pm; and
- B. Restrict the sales of alcohol so it does not exceed fifty-percent (50%) of the total gross sales of the establishment, to be verified by an annual affidavit submitted to the Planning and Zoning Office.

12. Attorney Bernheim's 5/31/24 modifications also included a language change to substitute the word "permitted" instead of "existing" when describing Retail Food Establishments allowed in the Residence B zone. Attorney Bernheim explained the change was intended to clarify any future Retail Food Establishment located at the target site at 222 Hillspoint Rd. shall be permitted to have a liquor license; it will not be tied to the current operator.
13. At the second public hearing on June 3, 2024, a member of the Planning and Zoning Commission suggested the applicant's language change (substituting the word "permitted" instead of "existing") was unnecessary to execute the applicant's intent and he preferred the word "existing" remain in the text as that was how the proposed amendment was advertised on the meeting agenda. The applicant offered no objections.

Department Comments

14. The amendment was sent to local, regional, and state departments and agencies for comments. No objections were received.
15. An observation was offered by the Aspetuck Health District Director in comments dated 5/13/24 regarding provision of bathrooms for public use should the existing patron seating at Retail Food Establishments be expanded.
16. Cindy Tyminski, in a letter dated 5/13/24 confirmed the business at 222 Hillspoint Rd. has no intent at this time to increase capacity.
17. Planning and Zoning staff in comments dated 5/14/24 and 5/23/24 described the amendment will not authorize liquor service in any Outdoor Eating Area where it is not currently allowed. An amendment is required to §32-20, Special Requirements for Outdoor Eating Areas, to permit this use currently prohibited in all residential zones.
18. The modified amendment was referred to the Town Attorney's Office to confirm the language limiting the potential benefits to existing Retail Food Establishments in the Residence B zone only, may be considered by the Planning and Zoning Commission without running afoul of any land use case law due to its' limited applicability.

19. Attorney Peter Gelderman, in comments dated 5/22/24, confirmed there are no legal impediments to the revised text amendment limited to benefitting existing establishments in the Residence B zone. Attorney Gelderman wrote:

"The proposed change does not violate the "uniformity" clause because it applies "across the board" to all properties within the Res. B zoning district. There may be only a limited number of properties (or even one property) that ultimately fit the requirements of the proposed regulation, but all property within the Res. B district is subject to it.

Also, it is not spot-zoning. For one, as stated, it applies to all property within the Res. B zoning district (even though not all properties could take advantage of it). Also, spot-zoning applies to map changes, not text

changes. Spot-zoning would be re-zoning a small piece of property in an existing zone to another zoning district for the purpose of permitting a use or structure that would not otherwise be allowed. Spot-zoning is rarely if ever applied by the courts anymore and generally the parcel to be re-zoned must be very small and the new zone must be so out of character with the existing zone as to be totally incompatible with a valid zoning purpose.

So, there are no legal impediments to the revised text amendment #843 to be limited to Res. B districts."

Public Participation

20. A press release concerning the text amendment was distributed to local media outlets to enhance public awareness.
21. Public hearings were held and testimony received on May 20th, and June 3rd, 2024.
22. The public hearings were held remotely consistent with State Statutes. The hearings were broadcast live on public access television, and/or live streamed on the Town's website, and anyone could join the meetings and offer testimony by accessing the meeting links published on the agendas prior to the meeting.

NOW THEREFORE, BE IT RESOLVED Text Amendment #843: #PZ-24-00197 is ADOPTED AS MODIFIED, submitted by Cindy Tyminski of Moon Gardens, LLC, seeking to modify §31-9, Liquor Establishments, and §5-2, Retail Food Establishments, to allow for liquor service for on-site consumption at existing Retail Food Establishments in the Residence B zone as of the adoption of the proposed amendment. The targeted benefitting property is 222 Hillspoint Rd., to allow liquor service at Old Mill Grocery and Deli by Romanacci. The amendment was modified and adopted for the following reasons:

MODIFICATION

1. The Planning and Zoning Commission chose to maintain the wording of “existing,” instead of “permitted,” finding the applicant’s proposed substitution was unnecessary to execute the applicant’s intent, and so the adopted text may more closely resemble how the amendment was advertised on the meeting agenda.
2. The applicant offered no objections to the modification.

REASONS

1. Adopting the amendment has the potential to aid the economic viability of at least one existing Retail Food Establishments in the Residence B zone.
2. Affording potential flexibility in the operations of an existing Retail Food Establishment in the Residence B zone that benefits many, is preferable as it may decrease the likelihood such an establishment will be converted into another single-family residence for the benefit of one.
3. Retail Food Establishments in residence districts provide a strong sense of community and place, and connection with one’s neighbors, as identified by the applicant.
4. The amendment is consistent with the Comprehensive Plan (Zoning Regulations and Zoning Map), and the *2017 Plan of Conservation a Development* that promotes efforts to maintain neighborhood and community character;
5. The Town Attorney’s Office in comments dated 5/22/24 confirmed there are no legal impediments to adopting the amendment as revised by the applicant. as it is NOT contrary to the uniformity clause nor is it spot zoning.

VOTE:

AYES	-5-	{Lebowitz, Cohn, Cammeyer, Calise, Injeski
NAYS	-2-	{Zucaro, Valante}
ABSTENTIONS	-0-	

The effective date of the amendment is: June 17, 2024.

Very truly yours,



Paul Lebowitz, Chairman
Planning & Zoning Commission

Attached

Text Amendment #843, Adopted as Modified

CC: Jen Tooker, First Selectwoman
Ira Bloom, Town Attorney
Pete Gelderman, Town Attorney's Office
Ted Gill, Engineering Department
Keith Wilberg, Town Engineer
Colin Kelly, Conservation Director
Paul Friia, Tax Assessor
Terry Dunn, Fire Marshal
Al D'Amura, WPD Staff Corporal
Matt Mandell, RTMP&Z Committee Chairman
Jeff Wieser, RTM Moderator

Text Amendment #843

Authored by: C. Tyminski, Moon Gardens LLC

Submitted: 4/08/24

Received: 4/22/24

Revised: 5/31/24

Public Hearing: 5/20/24, and continued to 6/3/24

Adopted as Modified: 6/3/24

Effective date: 6/17/24

Deleted language is [struck-out and in brackets]; New language is underlined. Modified language in **red**.

FROM §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~~[- except that]~~ 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.

FROM §31, REGULATIONS APPLYING TO ALL DISTRICTS

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

1. ~~[liquor]~~ Liquor establishments in Residential Districts that have a valid liquor permit issued by the Connecticut Liquor Control Commission as of the effective date of this regulation August 9, 2010; [and]
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; or
3. Special Events that obtain a temporary liquor permit approved by the P&Z Director, the Police Chief and issued by the Connecticut Liquor Control Commission.