



# WESTPORT CONNECTICUT

PLANNING & ZONING  
TOWN HALL, 110 MYRTLE AVENUE  
WESTPORT, CONNECTICUT 06880  
(203) 341-1030 • (203) 341-1079  
(203) 454-6145 - fax

Hearing: April 29, 2010  
Decision: May 13, 2010

May 14, 2010

To Whom It May Concern:

**RE: Text Amendment 610:** Appl. #10-009 by the Planning and Zoning Commission for an amendment to the Westport Zoning Regulations to modify §5-2, Definitions to add Outdoor Eating Area and Food Establishment, Retail, to modify §22-2.3.3, RORD Zone, to add §23-2.3.3, RBD Zone, to modify §24-2.3.5 GBD Zone, to add §25-2.3.5, HSD Zone, to modify §28-2.3.4, BPD Zone, to modify §29-2.3.5, BCD Zone, to modify §29A-2.3.5, BCD/H Zone, to modify §30-2.4.4 HDD Zone, to modify §32-6.1, Outdoor Storage & Display, to add §32-20, Outdoor Eating Areas, to modify §43-14.2, Eligible Applications

This is to certify that at a meeting of the Westport Planning and Zoning Commission held May 13, 2010 it was moved by Mr. Press and seconded by Mr. Lathrop to adopt the following resolution.

## RESOLUTION #10-009

WHEREAS, THE PLANNING AND ZONING COMMISSION met on May 13, 2010 and made the following findings:

1. Text Amendment #610 is proposed by the Planning and Zoning Commission and is intended to allow both restaurants and retail food establishments to simply obtain zoning permits for Outdoor Eating Areas by simplifying the review process. In Chapter 7 of the 2007 Plan of Conservation and Development there are numerous references that address the need to create more opportunities for dining opportunities and the use of outdoor space.
2. Text Amendment #610 proposes replacing the existing Outdoor Dining regulations and some aspects of the Outdoor Storage and Display Regulations and consolidates them into one new amendment called Outdoor Eating Areas which has a new set of standards proposed to be in a new §32-20.
3. The Amendment proposes the following new definitions:
  - Outdoor Eating Area - An outdoor area located on the same property as a Restaurant, Fast Food Restaurant or Retail Food Establishment that allows for tables & chairs for outdoor table service or self-service dining subject to a zoning permit and the requirements found in §32-20.
  - Retail Food Establishment - A retail food establishment shall mean any business where food or beverages are sold to the public for either on premises

or off premises consumption. Such establishments shall not be considered Restaurants or Fast Food Restaurants no additional parking will be required provided that they have indoor seating for 10 patrons or less. For outdoor seating – See §5-2 & §32-20 Outdoor Eating Areas.

4. The Amendment allows Outdoor Eating Areas as an accessory use for Restaurants, Fast Food Restaurants and Retail Food Establishment in the RORD, RBD, GBD, GBD/S, HSD, BPD, BCD, BCD/H and HDD Zones.
5. The Amendment modifies the existing Outdoor Storage & Display Regulations in §32-6.1 to recognize that Outdoor Eating Areas as not being considered as Outdoor Storage and Display.
6. The Amendment creates a new set of standards proposed to be in §32-20 which are summarized below:
  - Required Departmental Approvals – Health, Police & Fire Dept approvals are required.
  - Design/Use of Area – This section specifies the nature of a enclosures and days & hours of operations and no outdoor music
  - Size/Parking Requirements – This section sets limits on the size of the area and establishes parking requirements.
  - Seasonal Use – This section specifies the duration of time during the year that the area may be used.
  - Setback Requirements – This section specifies how certain setback requirements may be waived.
  - Landscaping – This section specifies that existing required landscaping areas may not be removed.
7. The Amendment modifies the list of applications eligible to be heard by the Administrative Review Committee (ARC).
8. The Commission notes that the amendment inadvertently omitted Sundays but that subject will be addressed in an upcoming Amendment.
9. The Commission received comments from a number of Town Agencies and the Regional Planning Association.
10. The Commission received extensive comments from the Architecture Review Board about their concerns about the approval process and the appearance of these accessory structures.
11. A hearing was held to allow members of the public the opportunity to offer testimony on the amendment.

NOW THEREFORE, BE IT RESOLVED that **Text Amendment 610: Appl. #10-009** by the Planning and Zoning Commission for an amendment to the Westport Zoning Regulations to modify §5-2, Definitions to add Outdoor Eating Area and Food Establishment, Retail, to modify §22-2.3.3, RORD Zone, to add §23-2.3.3, RBD Zone, to modify §24-2.3.5 GBD Zone, to add §25-2.3.5, HSD Zone, to modify §28-2.3.4, BPD Zone, to modify §29-2.3.5, BCD Zone, to modify §29A-2.3.5, BCD/H Zone, to modify §30-2.4.4 HDD Zone, to modify §32-6.1, Outdoor Storage & Display, to add §32-20, Outdoor Eating Areas, to modify §43-14.2, Eligible Applications be **ADOPTED** as **MODIFIED** for the following reasons:

1. The Planning & Zoning Commission during its work session discussions agreed to the following modifications:
  - i. Outdoor Dining Permit shall be subject to an annual Zoning Permit
  - ii. On Fridays & Saturdays the maximum hours of operation shall be not later than 12 midnight unless authorized by the ARC or by Special Permit.
  - iii. If the Outdoor Eating Area has tent, canopy or fixed awning and such cover is not used for 3 continuous months, the cover and frame must be moved from the Outdoor Dining Area when not in use.
  - iv. Patron Bars for Outdoor Eating Areas can not be located within the any setback areas.
  - v. Outdoor Eating Areas that are located between a Residential Zoning District Boundary Line and the building shall be subject to Special Permit approval.

The Commission made these changes for the following reasons:

- i. This change was made insure compliance with the Zoning Regulations on an annual basis
  - ii. This change was made to impose controls over the hours of operation of Outdoor Eating Areas
  - iii. This change was made to address concerns regarding the storage of Outdoor Eating Area equipment when it is not in continuous use.
  - iv. This change was made to restrict the location of Patron Bars located in Outdoor Eating Areas
  - v. This change was made to require Special Permit when the Outdoor Eating Area abuts a residential zone so that Special Permit standards and conditions can be applied.
2. The Planning and Zoning Commission finds the remainder of the proposed text shall be adopted as submitted except for minor wording changes inserted for clarification.
3. The Planning and Zoning Commission finds the amendment is consistent with the Comprehensive Plan.

4. The Planning and Zoning Commission finds the amendment is consistent with the 2007 Town Plan of Conservation and Development as it addresses many of the issues raised in Chapter 7 regarding community activities and the use of outdoor spaces.
5. The Planning and Zoning Commission finds the amendment is consistent with the 2007 Town Plan of Conservation and Development that includes specific recommendations to:
  - A. *“Encourage the community use of ‘outdoors’ in both traditional green spaces (parks) and in retail/restaurant corridors.” Pg 7-6*
  - B. *“Allow additional uses which promote evening activities and outdoor life. These may include additional outdoor seating permitted for restaurants; seasonal kiosks/food vendors with their own seating in parks, plazas or other feasible locations.” Pg 7-9*
6. The Planning and Zoning Commission finds the amendment will benefit the Town of Westport by modifying the zoning regulations to address the needs Westport residents and businesses.

**Effective date: June 14, 2010**

**VOTE:**

AYES	4	Corwin, Press, Lathrop, Jinishian
NAYS	2	Lowenstein, Krawiec
ABSTENTIONS	0	

Very truly yours,



Ron Corwin  
Chairman, Planning & Zoning Commission

Att. Adopted Text Amendment #610

cc: Paul Friia, Tax Assessor  
Steve Smith, Building Official  
Steve Edwards, Department of Public Works  
Mark Cooper, Westport Weston Health District  
Ed Zygmant, Fire Marshal  
Al Fiore, Police Chief  
Ira Bloom, Town Attorney

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**Amendment #610**

Submitted: 3/16/10

Received: 4/5/10

Revised: 5/13/10

Public Hearing: Scheduled for: 4/29/10

Adopted: 5/13/10

Effective date: 6/14/10

§5 DEFINITIONS 5-2 Specific Terms

<i>TERM</i>	<i>DEFINITION</i>
<u>Outdoor Eating Area:</u>	<u>An outdoor area located on the same property as a Restaurant, Fast Food Restaurant or Retail Food Establishment that allows for tables &amp; chairs for outdoor table service or self-service dining subject to an annual Zoning Permit and the requirements found in §32-20.</u>
<u>Food Establishment,</u> <u>Retail:</u>	<u>A retail food establishment shall mean any business where food or beverages are sold to the public for either on premises or off premises consumption. Such establishments shall not be considered Restaurants or Fast Food Restaurants and no additional parking will be required provided that they have indoor seating for 10 patrons or less. For outdoor seating – See §5-2 &amp; §32-20 Outdoor Eating Areas.</u>

§22 RORD Zone

- 22-2.3.3 Outdoor Eating Areas for Restaurants, Fast Food Restaurants and Retail Food Establishments only in RORD #2 are subject to an annual Zoning Permit approval pursuant to §5 and §32-20 Outdoor Eating Areas., annual Health permit and the following conditions:
- ~~(a) The outdoor eating area shall be accessible from the restaurant building only~~
  - ~~(b) The outdoor eating area shall not exceed either twenty (20) percent of the interior patron floor area or 6 tables and 24 chairs, whichever is less.~~
  - ~~(c) The outdoor eating area shall be largely open to the elements, and shall not be enclosed with a roof and walls be they permanent or temporary. The only exception are the use of umbrella tables and the protection of food preparation areas required by state and local health regulation. This type of patio will require no parking. If any type of protection from the elements~~

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~~other than table umbrellas is put over or around the patio then parking shall be required in accordance with the parking requirements for a restaurant.~~

- ~~(d) The outdoor eating area shall be a seasonal operation not to exceed a six month period from May 1 to November 1 of each year.~~
- ~~(e) Such outdoor eating area shall be exempt from the off-street parking requirements. If the patio exceeds the requirements in (b) then parking shall be required for the whole patio as stated in (c).~~

§23 RBD Zone

- 23-2.3.3 Outdoor Eating Areas for Restaurants, Fast Food Restaurants and Retail Food Establishments are subject to an annual Zoning Permit approval pursuant to §5 and §32-20 Outdoor Eating Areas

§24 GBD Zone

- 24-2.3.5 Outdoor Eating Areas for Restaurants, Fast Food Restaurants and Retail Food Establishments are subject to an annual Zoning Permit approval pursuant to §5 and §32-20 Outdoor Eating Areas and §45-4, annual Health permit and the following conditions

- ~~(a) The outdoor eating area shall be accessible from the restaurant building only~~
- ~~(b) The outdoor eating area shall not exceed either twenty (20) percent of the interior patron floor area or 6 tables and 24 chairs, whichever is less.~~
- ~~(c) The outdoor eating area shall be largely open to the elements, and shall not be enclosed with a roof and walls be they permanent or temporary. The only exception are the use of umbrella tables and the protection of food preparation areas required by state and local health regulation. This type of patio will require no parking. If any type of protection from the elements other than table umbrellas is put over or around the patio then parking shall be required in accordance with the parking requirements for a restaurant.~~
- ~~(d) The outdoor eating area shall be a seasonal operation not to exceed a six-month period from May 1 to November 1 of each year.~~
- ~~(e) Such outdoor eating area shall be exempt from the off-street parking requirements. If the patio exceeds the requirements in (b) then parking shall be required for the whole patio as stated in (c).~~

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§25 HSD Zone

25-2.3.5 Outdoor Eating Areas for Restaurants, Fast Food Restaurants and Retail Food Establishments are subject to an annual Zoning Permit approval pursuant to §5 and §32-20 Outdoor Eating Areas

§28 BPD Zone

28-2.3.4 Outdoor Eating Areas for Restaurants, Fast Food Restaurants and Retail Food Establishments subject to an annual Zoning Permit approval pursuant to §5 and §32-20 Outdoor Eating Areas and §45-4., annual Health permit and the following conditions

- (a) ~~The outdoor eating area shall be accessible from the restaurant building only~~
- (b) ~~The outdoor eating area shall not exceed either twenty (20) percent of the interior patron floor area or 6 tables and 24 chairs, whichever is less.~~
- (c) ~~The outdoor eating area shall be largely open to the elements, and shall not be enclosed with a roof and walls be they permanent or temporary. The only exception are the use of umbrella tables and the protection of food preparation areas required by state and local health regulation. This type of patio will require no parking. If any type of protection from the elements other than table umbrellas is put over or around the patio then parking shall be required in accordance with the parking requirements for a restaurant.~~
- (d) ~~The outdoor eating area shall be a seasonal operation not to exceed a six month period from May 1 to November 1 of each year.~~
- (e) ~~Such outdoor eating area shall be exempt from the off-street parking requirements. If the patio exceeds the requirements in (b) then parking shall be required for the whole patio as stated in (c).~~

§29 BCD Zone

~~29-2.3.5 Outdoor Eating Areas for Restaurants, Fast Food Restaurants and Retail Food Establishments are subject to an annual Zoning Permit approval pursuant to §5 and §32-20 Outdoor Eating Areas and §45-4., annual Health permit and the following conditions~~

- ~~(a) The outdoor eating area shall be accessible from the restaurant building only~~
- ~~(b) The outdoor eating area shall not exceed either twenty (20) percent of the interior patron floor area or 6 tables and 24 chairs, whichever is less.~~

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- ~~(c) The outdoor eating area shall be largely open to the elements, and shall not be enclosed with a roof and walls be they permanent or temporary. The only exception are the use of umbrella tables and the protection of food preparation areas required by state and local health regulation. This type of patio will require no parking. If any type of protection from the elements other than table umbrellas is put over or around the patio then parking shall be required in accordance with the parking requirements for a restaurant.~~
- ~~(d) The outdoor eating area shall be a seasonal operation not to exceed a six month period from May 1 to November 1 of each year.~~
- ~~(e) Such outdoor eating area shall be exempt from the off street parking requirements. If the patio exceeds the requirements in (b) then parking shall be required for the whole patio as stated in (c).~~

§29A BCD/H Zone

29A-2.3.5 Outdoor Eating Areas for Restaurants, Fast Food Restaurants and Retail Food Establishments are subject to an annual Zoning Permit approval pursuant to §5 and §32-20 Outdoor Eating Areas and §45-4, annual Health permit and the following conditions

- ~~(a) The outdoor eating area shall be accessible from the restaurant building only~~
- ~~(b) The outdoor eating area shall not exceed either twenty (20) percent of the interior patron floor area or 6 tables and 24 chairs, whichever is less.~~
- ~~(c) The outdoor eating area shall be largely open to the elements, and shall not be enclosed with a roof and walls be they permanent or temporary. The only exception are the use of umbrella tables and the protection of food preparation areas required by state and local health regulation. This type of patio will require no parking. If any type of protection from the elements other than table umbrellas is put over or around the patio then parking shall be required in accordance with the parking requirements for a restaurant.~~
- ~~(d) The outdoor eating area shall be a seasonal operation not to exceed a six month period from May 1 to November 1 of each year.~~
- ~~(e) Such outdoor eating area shall be exempt from the off street parking requirements. If the patio exceeds the requirements in (b) then parking shall be required for the whole patio as stated in (c).~~



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§30 HDD Zone

30-2.4.4 Outdoor Eating Areas for Restaurants, Fast Food Restaurants and Retail Food Establishments are subject to an annual Zoning Permit approval pursuant to §5 and §32-20 Outdoor Eating Areas and §45-4, annual Health permit and the following conditions

- ~~(a) The outdoor eating area shall be accessible through the restaurant only.~~
- ~~(b) The outdoor eating area shall not exceed either 20% of the interior patron floor area or 6 tables and 24 chairs, whichever is less.~~
- ~~(c) The outdoor eating area shall be a largely open to the elements, and shall not be permanently enclosed with a roof and walls.~~
- ~~(d) The outdoor eating area shall be a seasonal operation not to exceed a six month period from May 1 to November 1 of the year.~~
- ~~(e) Such outdoor eating area shall be exempt from the off-street parking requirements.~~

32-6.1 All outdoor storage and display areas shall: not be visible from any adjoining Residence District, not obstruct or impair vehicular or pedestrian traffic, not reduce or impinge upon required off-street parking or loading spaces, be maintained in a clean and attractive manner, and cannot be located in the front landscape area. Tables and chairs associated with Outdoor Eating Areas shall not be considered as outdoor storage and display but shall be subject to §5 and §32-20 Outdoor Eating Areas.

32-20 Special Requirements for Outdoor Eating Areas

Outdoor Eating Area as defined in §5 shall be permitted where applicable in these regulations subject to the following requirements:

1. Required Departmental Approvals: – All Outdoor Eating Area applications shall be approved, as applicable, by the Westport-Weston Health District, the Police Department and the Fire Marshall's office as applicable prior to a the issuance of a zoning permit.
2. Design/Use of Area. Outdoor Eating Areas may use umbrellas or a temporary fabric roof structure. Such a structure may have rigid supports and fabric or soft (non rigid) sides. Such areas may be heated. These area may not be considered in the future as permanent building additions. There shall be no music in any Outdoor Eating Area. The hours of operation shall be limited to 6:30 AM to

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11:00 PM on Mondays through Thursdays and 6:30 AM to 12:00 midnight on Fridays and Saturdays except if approved by ARC or Special Permit to operate as late as 2:00 AM.

3. **Size/Parking Requirements** – Outdoor Eating Areas for Restaurants and Fast Food Restaurants shall not require additional parking if the area does not exceed twenty (20) percent of the interior patron floor area or 500 square feet which ever is less. Parking shall not be required for Outdoor Eating Areas for Retail Food Establishments of 1,500 sq. ft. (gross floor area) or less when they do not exceed 250 sq. ft or 20% of the gross floor area which ever is less and for Retail Food Establishment of over 1,500 sq. ft (gross floor area) when they do not exceed 500 sq. ft. or 20% of the gross floor area which ever is less. Parking shall be required for the portion of an Outdoor Eating Area that is in excess of above in accordance with the parking requirements for patron area of a restaurant.
4. **Seasonal Use** – The Outdoor Eating Areas may be used all year round, however if such area is covered by a tent, canopy or fixed awning and will not be used on a regular basis for 3 continuous months (e.g., January, February, & March) all elements of the Temporary Fabric Roof Structures shall be removed from the area.
5. **Setback Requirements.** Outdoor Eating Areas are permitted in front, side and rear setback areas and front landscape areas, except for patron bars which must comply with setbacks, on private property provided that they do not block or interfere with sidewalks, walkways or emergency egress as determined by the Fire Marshall. Outdoor Eating Areas shall not be permitted within 30 feet of any Residential Zoning District Boundary Line.
  - a) Outdoor Eating Areas that have a clear line of sight to a residential zone (not blocked by a building) must obtain ARC approval unless such Outdoor Eating Area is bordered by a water body.
  - b) Outdoor Eating Areas located on the portion of a lot between a Residential Zoning District Boundary Line and the building shall only be permitted pursuant to Special Permit approval.
6. **Landscaping.** Required front landscape areas and vegetative buffers that are planted as of the effective date of this regulation (INSERT DATE) shall not have vegetation removed to accommodate this use.

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**43-14.2 Eligible Applications**

Administrative Site Plans may be submitted to the Administrative Review Committee for the following types of projects only:

1) Site Plan Modifications

Where only site work is involved such as parking lot alterations or expansions, landscape modifications (refuse area, screening, retaining walls, fences) and utility modifications; provided that said minor modifications complies with §34 and 35, herein.

2) Small Building Additions

Small building additions with fewer than five hundred (500) square feet of building coverage and containing fewer than five hundred (500) square feet of gross interior floor space. Exterior staircases mandated by the Fire Marshal and handicap ramps and elevators mandated by the Building Official for public safety; and awnings. Site Plan approval is not required for ground mounted or roof top mechanical units.

3) Small Changes of Use

A small change of use within an existing building including an increase of not more than three (3) required parking spaces on the lot.

Coastal site plan review pursuant to §31-10.7 shall be required for small changes of use on waterfront property.

4) Accessory Apartments

In accordance with §11-2.4, herein.

5) Affordable Accessory Apartments

In accordance with §11-2.4.12A, herein.

6) Apartments that predate 1959 per §11-2.4.13.

7) Exterior facade changes to commercial buildings.

8) Outdoor Storage & Display per §32-6

9) Outdoor Eating Areas that do not comply with the requirements of §32-20 (5).



**TOWN OF WESTPORT**  
**PLANNING & ZONING DEPARTMENT**  
Town Hall, 110 Myrtle Avenue  
Westport, CT 06880  
Phone(203) 341-1030, Fax (203) 454-6145

## Memorandum

**To:** Laurence Bradley, P&Z Director  
**From:** Susan Reynolds, Zoning Enforcement Officer  
**Date:** July 22, 2010  
**Re:** Amendment 610

I have a basic question which relates to this amendment and to restaurants with liquor licenses regardless of whether they have outdoor dining. Who regulates the number of liquor licenses in Westport and how would we know when the number has been exceeded so no additional approvals are granted?

With the 1500 foot rule at least all areas of town had a fighting chance for a license. With no distance limitation some areas of town may end up having bars cheek by jowl until the maximum number is reached, leaving other areas as dry as a proverbial wasteland. For example, we have had numerous complaints over the years about parking down on Riverside by Bridge St. and have also received requests for additional dining/drinking tenants there. Other areas currently have very limited access to liquor establishments.

As to the amendment:

Your cover memo dated 7/2/10 should be revised to a date after the 6/14/10 meeting referenced.

**Design/Use of Area.** How will the hours of operation be enforced? P&Z staff does not work nights and it's my understanding that the police do not enforce our regulations.

**Size/Parking Requirement.** How will parking be calculated? Will the Outdoor Eating Area be calculated based on the patio floor, the covered area, or the approved dining area which may be different than the floor or the covering?

**Setback & Coverage Requirements.** After "front landscape areas" it refers to patron bars which must comply with setbacks. Are we now going to allow patron bars outside? If this is referring to restaurants with patron bars and outdoor eating areas it should be more specific. The fact that outdoor eating areas are still not allowed within 30' of a residential zone line will still be a problem for many (Matsu Sushi, Crumbs). Perhaps sites within 30' of a residential zone can go to ARC for approval.

**Landscaping.** "Required front landscape areas and vegetative buffers that are planted have been previously approved shall not have vegetation removed to accommodate this use and must continue to be maintained as required in the original approval."

**Eligible Applications.** I would suggest keeping (9) for sites adjacent to residential zones.