



**Town of Westport
Planning and Zoning Commission**

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Westport, CT 06880

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Public Hearing: Nov. 4, 2024

Work Session: Nov. 4, Nov. 18, 2024

Decision: Nov. 18, 2024

November 19, 2024

Eric Bernheim, Esquire, FLB Law

33 Riverside Ave., 4th Floor

Westport, CT 06880

RE: Text Amend. #846/PZ-24-00565, Request to amend the Zoning Regulations including modifying §32-20, Special Requirements for Outdoor Eating Areas; modify definitions in §5-2, for "Retail Food Establishment," and "Outdoor Eating Areas;" and modify standards in §31-9, Liquor Establishments

Dear Attorney Bernheim

This is to certify that at a meeting of the Westport Planning and Zoning Commission held on November 18, 2024, it was moved by Ms. Wistreich and seconded by Mr. Cammeyer to adopt the following resolution:

RESOLUTION #PZ-24-00565

WHEREAS THE PLANNING AND ZONING COMMISSION met on November 18, 2024, and made the following findings:

FINDINGS

Proposal

1. Text Amendment #846, Rev. 10/23/24, was submitted by Attorney Eric Bernheim of FLB Law.
2. Text Amendment #846 proposes to amend the Zoning Regulations, including modifying:
 - A. §5-2, (Definition of) "*Retail Food Establishment*," to include any business capable of meeting the existing definition and operating in a Residence Zone under a zoning permit issued on or before September 1, 2024;

- B. §5-2, (Definition of) "*Outdoor Eating Areas*" to authorize use of portable food carts and service stations within an Outdoor Eating Area;
 - C. §31-9, *Liquor Establishments*, to expand the sale of alcoholic liquor to Retail Food Establishments existing in a residential zone prior to September 1, 2024; and
 - D. §32-20, *Special Requirements for Outdoor Eating Areas*, to:
 - Allow Outdoor Eating Areas for any Retail Food Establishment existing or operating in a residential zone prior to September 1, 2024, and
 - Establish setback standards for Outdoor Eating Areas Accessory to Retail Food Establishments existing or operating prior to September 1, 2024.
 - E. Language is added throughout the proposed amendment to ensure existing language does not prohibit administering the amendment once adopted, including:
 - Adding language to Chapter 6 (Nonconforming Uses, Buildings and Lots) as it could be argued existing language prohibits the intensification Retail Food Establishments located in a Residence Zone that will benefit from the amendment; and
 - Adding language to §5-2, §31-9, and §32-20 clarifying if adopted, the language will apply to any existing Retail Food Establishments operating prior to Sept. 1, 2024, located in the Residence AAA, AA, A, B, and C zones, notwithstanding existing language in §11-2, §12-2, §13-2, §14-2 and §18-2.
3. The amendment was revised following submission in response to comments from the Police Department dated 10/2/24 requesting language be added to §32-20, to require pedestrian flow be unhindered by portable food carts and service stations within and adjacent to the Outdoor Eating Area.
 4. Three (3) Retail Food Establishments operating prior to Sept. 1, 2024, in a residence zone, will benefit from Text Amendment #846 if adopted, including:
 - A. Old Mill Grocery & Deli by Romanacci-222 Hillspoint Rd. in the Residence B zone (*open until 8pm*);
 - B. The Porch at Christie's-161 Cross Highway in the Residence AA zone (*open until 3pm*); and
 - C. The Country Store – 332 Wilton Rd. in the Residence AA zone (*open until 8pm*).

Department Comments

5. No objections were received in response to referrals sent to Town Departments and others.
6. The Town Attorney's Office advised on 10/28/24 they have no legal objections and defer to the Commission on all policy decisions.
7. The Aspetuck Health District comments dated 10/3/24 state the following:
 - A. *"For outdoor eating areas served by a septic system, prior to any added seating, it must be demonstrated that the property is capable of handling the additional waste water design flow that will be generated from the seating;*
 - B. *The proposal proposes the right to utilize portable food carts and service stations in Outdoor Eating Areas. These would have to first be assessed by AHD to ensure compliance with the FDA Food Code; and*
 - C. *No food preparation can be conducted outdoors."*

Public Hearing

8. A public hearing was held to receive testimony from members of the public as required by State Statutes.
9. The public hearing was held remotely in accordance with State Statutes. 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.
10. 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.

NOW THEREFORE, BE IT RESOLVED Text Amendment #846: #PZ-24-00565 submitted by Eric Bernheim Esq., FLB Law, is **ADOPTED as MODIFIED** to amend §5-2 of the Zoning Regulations for Retail Food Establishment Outdoor Eating Areas; to amend §31-9, Liquor Establishments, and §32-20, Special Requirements for Outdoor Eating Areas, to expand the Outdoor Eating Area and Liquor Establishment regulations so they may apply to existing Retail Food Establishments operating in a Residence Zone.

MODIFICATIONS

1. Members of the Planning and Zoning Commission modified the setback standards for Outdoor Eating Areas in residential zones as proposed in §32-20.
2. The Commission required Outdoor Eating Areas shall not extend beyond 25' from the Principal Building rather than exempt Outdoor Eating Areas from the setback standards.

REASONS

1. Adopting Text Amendment #846 will provide standards where they don't currently exist for Outdoor Eating Area Accessory to existing Retail Food Establishments in residence zones.
2. Mitigation is incorporated into the text providing enforceable standards affecting hours of operation, lighting, and signage any of which if left unregulated can become nuisances to residential neighbors.
3. Retail Food Establishments in Residence Zones provide a strong sense of community and connection with one's neighbors;
4. Unlike chain establishments, neighborhood Retail Food Establishments are often embedded within residential zones and primarily serve the needs of the local community.
5. The amendment if adopted is consistent with goals in the *2017 Plan of Conservation and Development* that promote efforts to maintain neighborhood and community character;
6. Helping to maintain existing commercial uses in Residence Zones will help incentivize preservation of some historic structures (instead of building another new single-family home);
7. Retail Food Establishments (in any zone), create jobs and increase tax revenue;
8. Risk for unanticipated consequences is reduced as the amendment is narrowly tailored to allow an Accessory use to those Retail Food Establishments in a Residence Zone that exist as of Sept. 1, 2024, as described in Finding #4 above.

The effective date of the amendment is: **December 12, 2024.**

VOTE:

| | | |
|-------------|-----|---|
| AYES | -5- | {Lebowitz, Cohn, Cammeyer, Calise, Wistreich} |
| NAYS | -0- | |
| ABSTENTIONS | -0- | |

Very truly yours,

Paul Lebowitz/MY

Paul Lebowitz,
Chairman,
Planning & Zoning Commission

Att.

cc: Ira Bloom, Town Attorney
Nick Bamonte, Town Attorney's Office
Mark Cooper, Aspetuck Health District Director
Alan D'Amura, Staff Corporal, WPD
Terry Dunn, Fire Marshal
Rick Giunta, Deputy Parks and Recreation Director
Foti Koskinas, Westport Police Chief
Mark Cooper, Aspetuck Health District Director
Matt Mandell, Chairman, RTM P&Z Committee
Jeff Wieser, RTM Moderator

Text Amendment #846

Submitted: 9/25/24
 Last Revised: 10/23/24
 Received: 9/9/24
 Public Hearing: 11/4/24
 Adopted: 11/18/24
 Effective date: 12/12/24

Proposed Text Change,

Note: Proposed new language is shown in red, highlighted, and underlined.
 Proposed deletions are shown in [bracketed, struck through and highlighted]
 Modifications made by the Commission are shown in red, highlighted and underlined.

§32 SUPPLEMENTARY USE REGULATIONS

Each of the following uses is permitted in each district to the extent indicated for that use and district, subject to all provisions of the applicable district, except as specifically provided for in this section. Every application for the use of property subject to conditions set forth herein shall be filed in accordance with the provisions of these regulations, and shall be subject to approval by any commission, board or agency stipulated in this section.

32-20 Special Requirements for Outdoor Eating Areas

Outdoor Eating Areas as defined in §5 shall be permitted: (i) notwithstanding anything to the contrary in Chapter 6, Section(s) 11-2, 12-2, 13-2, 14-2 and 18-2, of these Regulations, for any Retail Food Establishment existing or operating in a residential zone prior to September 1, 2024, and (ii) in all Non Residential Zones, except RPOD, GBD/R, DDD and CPD on privately-owned property subject to the following requirements:

For use of Town-owned property including sidewalks, parking spaces, roads, or road right-of-way, or for Mobile Food Trucks, contact the Selectwoman's Office for their approval process:

1. **Required Planning and Zoning Approvals.** A Site Plan Waiver application shall initially be submitted to the Planning and Zoning Office and is eligible for approval by the Planning and Zoning Director pursuant to §43 and will be subject to obtaining a Zoning Permit. After the initial Site Plan Waiver is granted, the use shall be subject to an annual Zoning Permit from the Planning and Zoning Office renewed by May 1st each year thereafter provided there are no changes, or a new Site Plan Waiver must be obtained.

2. **Required Other Department Approvals.** Prior to submission of a Site Plan Waiver application, an Outdoor Patio approval must be obtained directly from:

- a. The Aspetuck Health District.
- b. The Fire Marshal's Office.

- c. The Building Department if proposing to use sidewalk areas.
- d. The Police Department for any Outdoor Eating Areas that abut driveways, parking lots and streets or are located within parking areas.

3. **Location.** Outdoor Eating Areas may be located on privately-owned property as follows: On-site, or on an abutting property with the approval of the property owner, in either case subject to providing a pathway constructed in compliance with Federal ADA requirements that is at least four-feet wide.

- a. Outdoor Eating Areas may be located on a privately-owned sidewalk in front of the Principal use, provided a four-foot-wide clear path shall be maintained consistent with the federal ADA requirements.
- b. Outdoor Eating Areas may be located within parking areas to support the Principal use provided a Barrier Protection Plan is submitted that is subject to approval by the Westport Police Department.
- c. Fire Department Appurtenances. No Outdoor Eating Area or related Structure shall impede access to fire hydrants, fire lanes, or fire department connections

4. **Size.** The Outdoor Eating Area shall not exceed 75% of the total Floor Area of the Principal use.

5. **Parking Requirements.** There are no minimum parking requirements for Outdoor Eating Areas.

6. **Setbacks/Coverage.** Outdoor Eating Areas located in a non-residential district shall not be permitted within 50-feet of a residential zoning district boundary line unless it is separated from the Residential Zone by a public street or a waterbody. Notwithstanding anything to the contrary in Chapter 6, Section(s) 11-2, 12-2, 13-2, 14-2 and 18-2, of these Regulations, an Outdoor Eating Area Accessory to a Retail Food Establishment in a residential zone existing or operating in such a manner to be consistent with the current definition of such an establishment prior to September 1, 2024 is permitted if located within 25-feet of the Principal Building. No Front Landscape Area may be removed to accommodate an Outdoor Eating Area. Structures used for an Accessory Outdoor Eating Area are exempt from Coverage requirements.

7. **Lighting.** Any lighting shall be down directed and not shed light beyond the property line.

8. **Covers, Enclosures and Structures.** Use of umbrellas, tents, awnings, igloos, and covers with rigid supports and fabric or non-rigid sides is permitted, with the construction material subject to the flame spread regulations of the Connecticut State Fire Safety Code. Such areas may be heated subject to an inspection by the Fire Marshal's Office before use.

Following the granting of a Site Plan Waiver and issuance of a Zoning Permit, a Building Permit shall be obtained for any Structure:

- a. Installing temporary or permanent electrical service.
- b. Installing temporary or permanent heating or air conditioning.
- c. That is a Tent with side walls in excess of 400 SF.
- d. That is a Tent open on all four sides in excess of 700 SF.
- e. That are multiple Tents set side by side without a 12-foot fire break whose aggregate area is in excess of 700 SF.

9. **Hours of Operation.** The hours of operation **in commercial zones** shall be limited to 6:30 a.m. to 11:00 pm Sundays through Thursdays and 6:30am to 12:00 midnight on Fridays and Saturdays. **Notwithstanding anything to the contrary in Chapter 6, Section(s) 11-2, 12-2, 13-2, 14-2 and 18-2 of these Regulations, the hours of operation for outdoor dining in residential zones shall be limited to 7:00 a.m. to 9:00 pm Sundays through Thursdays and 7:00 a.m. to 10:00 p.m. on Fridays and Saturdays.** There shall be no music in any Outdoor Eating Area after 9:00 p.m.

10. **Signage.** No additional signage shall be permitted. (814, 04/01/2022)

§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 **that** such establishments that exist in **a residential zone prior to September 1, 2024 [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. **Notwithstanding the foregoing or anything to the contrary in Chapter 6, Section(s) 11-2, 12-2, 13-2, 14-2 and 18-2, of these Regulations, any Lot located in a Residential zone with a business capable of meeting the definition herein and operating under a zoning permit issued by the Town of Westport Planning & Zoning Department as a Retail Food Establishment in a residential zone on or before September 1, 2024, shall be deemed to be a retail food establishment regardless of whether such business began operating prior to the adoption of the definition of a Retail Food Establishment, and a Permitted Use on the Lot.** (843, 06/17/2024)

Outdoor Eating Area:

An outdoor area serving as an Accessory Use to a Restaurant, Cafe, Tavern or Retail Food Establishment that allows for **portable food carts, service stations,** tables and chairs for outdoor table service or self-service dining, **provided, however, such uses shall not materially impede or obstruct safe pedestrian flow within and adjacent to the Outdoor Eating Areas** See §32-20.(814, 04/01/2022)

§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** 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.
2. **Notwithstanding anything to the contrary in Chapter 6, Section(s) 11-2, 12-2, 13-2, 14-2 and 18-2 of these Regulations,** Retail Food Establishments existing in ~~the Residence B district as of the adoption of this regulation, June 3, 2024~~ **a residential zone prior to September 1, 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. (843, 06/17/2024)