



To: Planning & Zoning Commission

From: Jeremy DeCarli, Planning & Zoning Official

RE: July 7, 2021 Planning and Zoning Commission Regular Meeting – Staff Notes

Date: July 2, 2021

The following are staff notes and comments as they relate to agenda items. Additional information and documents are available on the website. The status of applications are subject to change between the date of this memo and the date of the meeting.

5. Public Hearings for July 7, 2021

A. Application PZC-20-024: Paula Free, 249 West High St., for a special permit per Sec. 8.4 Motor Fuel Filling Station with a proposed convenience store in the Commercial Zone, Section 5.2. Map 06/Block 12/Lot 1B.

As of today (7/2/2021) I am awaiting word from the applicant whether or not this will move forward. They are still awaiting Phase 1A approval from CT DPH for the existing well on site.

B. Updates to East Hampton Zoning Map

Please see the memo I included with the meeting materials regarding the proposed updates and changes to the map. The updates include all approved zone changes from prior years as well as additions to the Reserved Land. Middlesex Land Trust has agreed to the RL designation for their properties.

6. New Business:

A. Application PZC-21-013: Connecticut Water Company, 204 Edgewater Circle, Site Plan Review for the Construction of a water treatment facility and associated site improvements. Map 10A/ Block 85/ Lot 15

This is a technical review for a Site Plan for the Edgewater Hills Development. The project was contemplated and accounted for during the subdivision that was approved about two years ago. The Plan in front of you is compliant with the MUDD zone and all other pertinent Zoning Regulations. An application to the East Hampton IWWA was not required as water companies are exempt from those regulations.

Recommendation: Approve the Site Plan as it is fully compliant with the Regulations.

B. Village Center Plan: Chris Roberts, Planning Intern

The Land Use Office has received a grant from the CT Chapter of the American Planning Association in order to hire an intern. Chris Roberts, a recent graduate of

Important Legislative Changes to Outdoor Dining Regulations Will Take Effect in 2022

June 23, 2021



The General Assembly has passed SB 1202 (no Public or Special Act number assigned as yet, but we will refer to it here as “the Act”) which (among other things) updates and extends the provisions of Special Act 21-3 concerning outdoor dining (Section 196 of the Act). It is anticipated that the Governor will sign the Act in the very near future. This Act will take effect April 1, 2022, which is when Special Act 21-3 expires. Outdoor dining that has been occurring by virtue of the Executive Orders and Special Act 21-3 will no longer be allowed after March 31, 2022, so restaurant uses will have to seek local approval under the terms of this new Act. For most of our client zoning commissions, this Act will

require you to review your current zoning regulations and adopt language to implement these new provisions. This Memorandum provides guidance about what topics you will need to review in the next 10 months to prepare for the April 1, 2022 effective date.

The Act defines “beverage” to include “alcoholic liquor or an alcoholic beverage, as defined in section 30-1 of the general statutes, [and] ‘food establishment’ means a food establishment that is licensed or permitted to operate pursuant to section 19a-36i of the general statutes.” Section 19a-36i(a) provides, “No person, firm or corporation shall operate or maintain any food establishment where food or beverages are served or sold to the public in any town, city or borough without obtaining a valid permit or license to operate from the director of health of such town, city or borough, in a form and manner prescribed by the director of health.” Thus, any form of food service (restaurant, bar, hotel restaurant, event facility, etc.) would be a “food establishment” under this Act. Therefore, the first thing that you need to do is review your definitions of terms like “restaurant” or “tavern” or “hotel” to be sure that they include any facility where food or beverages are sold to the public as a principal or accessory use. Each of these uses have the benefit of the Act’s protections.

Subsection b of the Act provides as follows:

(b) Notwithstanding any provision of the general statutes, special act, municipal charter or ordinance, the zoning commission of each municipality shall allow any licensee or permittee of a food establishment operating in such municipality to engage in outdoor food and beverage service as an accessory use of such food establishment's permitted use. Such accessory use shall be allowed as of right, subject only to any required administrative site plan review to determine conformance with zoning requirements not contemplated by this section, provided such accessory use would not result in the expansion of a nonconforming use.

This means that your zoning regulations must allow “food establishments” (as you define such uses) to have outdoor dining *as of right*, meaning that you can only require the issuance of a zoning permit by the ZEO or a site plan review by the commission). However, the Act does allow you to impose “zoning requirements not contemplated by this section” to which such applications would be subject. Note that you do not have to allow outdoor dining for legal nonconforming food service establishments, and certainly not for illegal ones. Note that as-of-right uses cannot be subjected to discretionary standards because the zoning official’s or the commission’s review is ministerial (a very low level of discretion.) Therefore, the conditions or requirements for outdoor dining must be very clear and express. Examples of such provisions would be:

- Note that the Act says that outdoor dining must be *accessory* to the principal food establishment use. Most zoning regulations define the term “accessory use” to be one that is subordinate and secondary to the principal use. Thus, a zoning regulation could limit the area of outdoor dining so that it remains “accessory.” An example would be limiting the outdoor dining area to no more than a percentage of the interior dining area.

- The regulation could address enclosure of the outdoor dining area (through fencing or planters) to keep pedestrians from walking through the dining area and to control litter that might be blown from such areas.
- The regulation could address illumination of outdoor dining areas to be sure that the lighting is focused on the tables and doesn't cause glare on adjoining properties. The height and type of luminaires could also be specified.
- The regulation could address signs associated with outdoor dining areas, such as signs on patio umbrellas, fences, and other structures. The right to use outdoor dining areas does not necessarily include expanded sign area, number, or height in such areas.
- The regulations could address amplified sound in outdoor dining area. While zoning cannot regulate sound by decibel level (that has been preempted by the State or local noise ordinances), you can regulate the hours of amplified sound, prohibit it entirely, or specify that speakers shall only be directed away from the perimeter of the outdoor dining area. While this could still result in a lot of sound, the patrons would be the first ones to complain if it was too loud.
- Note that food truck which operates on the public highway is not subject to zoning, but a stationary food truck (such as in a parking lot) would be a "food establishment" as defined in the Act. Many towns treat such food trucks as "restaurants," which means that they require zoning approval as such. Other towns choose to ignore them for zoning purposes. There is no right or wrong answer, but you should consider how stationary food trucks are handled in your town and what sort of "accessory" outdoor dining should be allowed.

Subsection c of the Act addresses outdoor dining on public sidewalks, off-street parking lots, and yards associated with the principal use. The language regarding sidewalks is:

Any such licensee or permittee may engage in outdoor food and beverage service (1) on public sidewalks and other pedestrian pathways abutting the area permitted for principal use and on which vehicular access is not allowed, (A) provided a pathway (i) is constructed in compliance with physical accessibility guidelines, as applicable, under the federal Americans with Disabilities Act, 42 USC 12101, et seq., as amended from time to time, and (ii) such pathway extends for the length of the lot upon which the area permitted for principal use is located, and not less than four feet in width, not including any area on a street or highway, shall remain unobstructed for pedestrian use, and (B) subject to reasonable conditions imposed by the municipal official or agency that issues right-of-way or obstruction permits;

Note again that the use of public sidewalks can be "subject to reasonable conditions imposed by the municipal official or agency" over and above what is in the Act, i.e., maintaining a 4-foot wide unobstructed path across the full length of the lot. Such conditions could include:

- Specifications for the "path" to be left open (besides width). For example, the regulations might provide that the path be a paved surface that can be shoveled in the winter and won't get muddy in the rain. There could also be requirements for illumination of the path.

The language regarding outdoor dining on off-street parking is:

on off-street parking spaces associated with the permitted use, notwithstanding any municipal ordinance or zoning regulation establishing minimum requirements for off-street parking;

Note here that the language does *not* include the language above about "subject to reasonable conditions imposed by the municipal official or agency," possibly suggesting that the zoning regulations cannot limit or regulate the use of off-street parking area for outdoor dining. On the other hand,, Subsection (b), which contains the overall requirement for outdoor dining, does have the language "zoning requirements not contemplated by this section," suggesting that overall requirements can be imposed. Since this is a new law and there is no judicial interpretation of it yet, but understanding that a judge might disallow such restrictions, on the basis that specific language in a statute trumps more general language, zoning commissions could consider language that:

- Limits the percentage of off-street parking that can be used for outdoor dining, or limits the number of parking spaces that can be so used.
- Specifies the location of outdoor dining in parking areas, such as requiring them to be adjacent to the principal building rather than at the far end of the parking lot.

- Requires temporary landscaping (such as in planters), fencing, or other amenities.
- Regulates illumination and amplified music, as noted above.

Such provisions would push the envelope and could invite judicial nullification, but until judicial interpretation, municipalities should consider acting to protect their own interests without actually prohibiting outdoor dining in parking lots.

The language regarding outdoor dining on a yard is:

on any lot, yard, court or open space abutting the area permitted for principal use, provided (A) such lot, yard, court or open space is located in a zoning district where the operation of food establishments is permitted, (B) such use is in compliance with any applicable requirements for access or pathways pursuant to physical accessibility guidelines under the federal Americans with Disabilities Act, 42 USC 12101, et seq., as amended from time to time, and (C) the licensee or permittee obtains written authorization to engage in such service from the owner of such lot, yard, court or open space and provides a copy of such authorization to the zoning commission; and (4) until 9 o'clock p.m., or a time established by the zoning commission of the municipality, whichever is later.

Note the ambiguity in the phrase, "in a zoning district where the operation of food establishments is permitted." Suppose a restaurant is located in a zone where restaurants are permitted by right, but the adjacent yard area is in a zone where restaurants are only permitted by special permit. Would outdoor dining be allowed as-of-right or would it require a special permit? We will have to wait until judicial interpretation, but at this point we would advise that even if the principal restaurant use requires a special permit in the zone, the accessory outdoor dining is nevertheless permitted as of right.

Note also the requirement for "written authorization to engage in such service from the owner of such lot, yard, court or open space." The regulations could include provisions concerning:

- The type of written authorization that is required, e.g., a lease, a temporary easement, or just a letter of consent.
- A provision that the outdoor dining use must be terminated upon the expiration or revocation of any such written consent, and the area restored to its prior condition (grass, etc.).
- Note that the zoning regulations could allow outdoor dining past 9 pm but must allow it until that hour. The regulations could also have different standards for weekdays versus weekends and legal holidays.
- As with the other provisions, regulations on lighting, amplified sounds, fencing, and landscaping could be included.

We look forward to working with our municipal clients to prepare zoning regulation amendments in preparation for the April 1, 2022 effective date of this Act. Without such regulations, there is bound to be confusion in the implementation of the Act and we urge you to consider how accessory outdoor dining can be accommodated in your town while minimizing adverse impacts.

Please feel free to reach out to any member of our Municipal Group with any questions or concerns.

the planning program at CCSU, has joined us for the summer. Chris has begun the process of a planning project focusing on the Village Center. Chris will be giving a brief presentation on the plan and its goals at the meeting.

7. Old Business:

A. **Discussion:** Pools and lot coverage

As discussed, this has become a recurring variance application with the ZBA. It is my opinion that a simple change in the definition for impervious coverage could resolve the majority of the issue.

B. **Discussion:** Update Sign Regulation to Include PO/R Zone Sign Standards.

A proposed regulation has been provided.

C. **Discussion:** Home Based Occupations

A workshop was held with the EDC. Some basic principles were agreed to. Both groups agreed the regulations would benefit the Town and that regulations should be developed carefully such that hobby activities are not impacted, that they encourage the growth of business, but do not negatively impact residential areas. Discussion centered on signage, if non-resident employees should be allowed, commercial vehicles, storage of materials, and creating definitions.

It was decided that the next workshop will focus on definitions and the topic of non-resident employees and clients on site.

A spreadsheet was created by the EDC Chairman, Matthew Reich, which compares the regulations from neighboring towns and has been included with the meeting materials.

8. Planner's Report

The Town Manager and I have begun work on an RFP for the redevelopment of the 1 and 13 Watrous Street Properties. We hope to issue that in the near future.

As discussed at the last meeting, House Bill 6107 has been passed and signed into Law. There are a few minor changes that will need to be made to the current zoning regulation, but most are not required until 2023.

As mentioned, the law requires Accessory Dwelling Units to be as-of-right, but provides an opt-out for municipalities. I would like to add a discussion topic to the next agenda to

weigh whether or not East Hampton should opt-out of the state legislation and keep the exiting regulation in place.

As you likely know by now, recreational marijuana is now legal in Connecticut. Retail sales will begin in early 2022. The legislation considers the sale of recreational marijuana as a retail use, just as is tobacco and vaping products. Municipalities have the option of prohibiting the sale of marijuana in town, but it must be expressly prohibited either by a local ordinance or in the Zoning Regulations, otherwise it must be treated as any other retail operation. I would like to have a discussion with the Commission to discuss how the Town would like to proceed.

The legislature has also made some changes to the rules for outdoor dining. Below is a summary from Halloran and Sage. I will be reviewing the changes and will discuss with the Commission at a future meeting what will be needed to be compliant with the new law.