

Minutes of the East Lyme Zoning Commission February 20, 2025 Regular Meeting

Date and Time: 2/20/2025 7:29PM to 9:10PM

Present: Members: Chairman Anne Thurlow, Secretary Nancy Kalal, Norman Peck, Michael Foley, Denise Markovitz, Debbie Jett-Harris. Alternates: Cathy Yuhás, Jim Liska (entered late) Sarah Susco (entered late). Staff: William Mulholland. Ex-Officio: Roseanne Hardy. Recording Secretary: Jessica Laroco. Town Attorney: Timothy Bleasdale.

Absent: None.

Location: East Lyme Town Hall Upper Conf Room 108 Pennsylvania Avenue

1. Call to Order and Pledge

Ms. Thurlow called the Regular Meeting of the East Lyme Zoning Commission to order at 7:29PM and led the Pledge of Allegiance.

2. Attendance

Ms. Thurlow called the roll and noted Alternates Jim Liska and Sarah Susco were absent; however, they entered late, 7:35PM and 7:40PM, respectively.

3. Public Hearing

There was none.

4. Regular Meeting

4-a Attorney Bleasdale spoke to the Commission regarding 8-30g Appeals Moratorium & Zone Changes

-Attorney Bleasdale made the following points on the 8-30g Appeals Moratorium:

-Clarified that the moratorium would apply to the appeals rules only, it is not a moratorium on 8-30g applications.

-Currently the appeals process puts the burden of proof on the Commission to defend itself should the decision be challenged in court. The Commission cannot simply deny an application because it does not meet the EL Zoning Regulations because it sets a higher legal standard. It must show the denial was shown to be connected to a substantial public interest in health and safety and it clearly outweighs the need for affordable housing in town and that public interest cannot be protected in any other way by making reasonable changes to the proposed development.

-A moratorium would get rid of all the special treatment in the appeals process. It allows the Commission to treat an affordable housing application just like any other application. The Commission could strictly apply the Zoning Regulations to the application. If the applicant were to appeal a denial, the burden would not be shifted to the Commission but rather would fall to the applicant to prove that the Commission had not applied the Zoning Regulations correctly. The Commission could defend itself by pointing to the regulation that the application failed to comply with.

-The Commission does not apply for a moratorium. Only the First Selectman can do this. It would be up to the town to prove to the state that it either meets the percentage requirement or the HUE points requirement. The Commission could make a nonbinding recommendation to the First Selectman to apply for a moratorium.

-There should not be a legal challenge to the application process

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William Mulholland
TOWN CLERK

-Developers can continue to submit affordable housing applications (should the moratorium be granted) the Commission does not have to give it special treatment but can simply apply the EL Zoning Regulations the same as any other application.

-Regardless of the moratorium, there are still statutory obligations for the town to be working towards and there is an affordable housing plan, and it will still be updated periodically. The town will still need to be working toward the 10% requirement of affordable housing. The town may be getting there in a different way though since all applications would need to meet town regulations (with a moratorium in place). It may happen more slowly.

-The statute (8-30g) gives all information for this; however, the clearest definition may be: with a moratorium, the applications lose the special treatment that they currently get, and they become just the same as any application the Commission has.

-The downsides to having a moratorium may not be immediately for the Commission or the town, but for developers. One of the purposes of the special treatment that the legislature has said must be given to the applications is to make it easier and more economical to build affordable housing. For developers, having to comply with the regulations including caps on the units built. It will make the application process more difficult and potentially more expensive which may change the calculus for them about whether they want to build in affordable housing. Down the line from that, not having as many affordable units built means there are fewer available in town and that would make it difficult for people looking for affordable units to find them. Eventually, although there would be a moratorium, there are still benchmarks to be met and the town is still expected to be working towards the 10% required. Currently the town is between 5-6% so there is still a ways to go.

-If there is a moratorium that is essentially discouraging the applications because they are more expensive and difficult, there would still be market rate units coming through because those are more economical for developers to build and so the gap from 5-6% (where we are) to 10% (where we need to be) will widen.

-The immediate effect for the Commission is that applicants will have to comply with the regulations.

-The following is Q&A

Q: Ms. Jett-Harris-How long does the application process take to complete?

A: It varies as dialog between the state, the town, and the attorneys evolves. There is a statutory period where if the state hasn't acted during that period, the town gets a temporary moratorium until the decision is made.

Q: Ms. Jett-Harris: Is it part of the Town Attorney role to help the First Selectman make application?

A: Yes, it would be a combination of the Town Attorney, the First Selectman, Mr. Goeschel, Mr. Mulholland, and Mr. Garside.

Q: Ms. Jett-Harris: Do the numbers change a lot?

A: IT took a year to assemble the numbers because previously the town had been tracking a percentage and not individual units for the HUE points. Now that the current HUE points have been assembled, they will continue to be tracked, going forward.

Q: Ms. Kalal: Once the application has been submitted, is it a yes or no answer from the state, do they have to say yes if we comply with the requirements?

A: If the town meets the requirements, it will be a yes. It could be a delayed process if there were clarification questions and dialog.

Q: Ms. Jett-Harris: Who will oversee keeping this information up to date going forward?

A: Typically, it is the Town Planners Office, but it would be a town process to track.

Q: Mr. Mulholland: Would the Regulations be applied using the underlying zone, the Affordable Housing Regulations?

A: Whichever is applicable and possibly both. A project could be proposed as straight multi-family housing, but still meet the statutory definition of affordability, therefore it doesn't have to be present to the Commission as affordable housing. Regardless of how it gets in front of the Commission, however, the Commission gets to apply the Regulations with no special consideration.

Q: Mr. Peck: How long does a moratorium last?

A: Four (4) years.

Q: Mr. Mulholland: The Planning Commission has recently received an affordable housing subdivision application; would this applicant have to comply with the subdivision regulations (with a moratorium) and the zoning regulations?

A: The applicant would still get the benefit of the 8-30g because it came in before the moratorium was granted. After the moratorium is granted, they would have to comply with the town regulations regardless of department.

Q: Ms. Jett-Harris: Are there any nearby towns that currently have a moratorium and when were they applied for?

A: Waterford recently applied, perhaps in the fall, unsure if it was granted a moratorium. Atty Bleasdale will send the application to M. Mulholland to distribute to the Commission to review.

Q: Mr. Peck: What about the renewal of the moratorium granted?

A: The HUE points sent will only include what's necessary for the moratorium to be granted, the rest would be held in reserve and the town could use that reserve, plus whatever new stock, for what would be a new moratorium application in four (4) years.

Q: Mr. Mulholland: Should approval be granted, could the state impose conditions on the approval?

A: The statute does not provide for that. It only reads grant or deny (not modify).

-Attorney Bleasdale made the following points on the zone change:

-He had not seen the details of the subcommittee for the zone change, but his understanding was the intent is to increase the minimum lot size on the north end of town.

-He did note that his comments could change based on the final details of an actual zone change proposal.

-Nonconforming is a legal status that means the lot, or the building, or the use was created before the zone changed, it was legal and conforming when it was created but the change made it nonconforming. It is legal protection that allows you to keep doing what you are doing.

-He assumes that most of the current properties conform to the current lot size requirement and by increasing the lot size requirement, those properties become nonconforming according to the regulations.

-There may be properties that are currently nonconforming because they're undersized according to the current regulations and if the minimum lot size is further increased, those lots become even more nonconforming.

-Section 21.1.4 of the regulations: 21.1.4 NONCONFORMING LOTS - Nothing in the East Lyme Zoning Regulations shall prevent the construction of a permitted building or a permitted use of a lot which prior to the adoption of the regulations or any additions or changes thereto, and continuously thereafter, was

established as a separate lot by deed or approved subdivision plan recorded in the land records of the Town.

-If all that's happening is a change in lot size, it may have a minimal effect in terms of how people use their properties.

-A new section would be created, and the Commission could create new uses etc. and that could curtail what is allowed in that zone.

-There are 3 different types of "things" that could be considered nonconforming; lots, buildings, uses.

-There are generally 4 things the Commission needs to be keeping in mind: 1. Legal standards; decision must be reasonably supported by the record of the Public Hearing. The reason behind this is that when a zone is changed, the Commission is acting in a legislative capacity rather than as an administrative application and when acting as such there is a lot more discretion. 2. Have to be able to show that the decision to rezone is consistent with the town's Comprehensive Plan, which is not the same as the Plan of Conservation and Development (POCD). The Comprehensive Plan is the overview of the whole town; what are the current uses in town in various zones, what do the zoning regulations provide for, and looking at the zoning map and regulations and taking the whole picture into account. Is the zone change consistent with this whole view. There is a leading treatise in Connecticut that is looked to and was written by Judge Fuller and he says that when making a change that is going to potentially create nonconforming lots, there is an open question in the law about whether that is presumptively not consistent with the Plan because you are taking an area where, presumably, most every was in conformity and making a large number of them nonconforming. There is no case that he is aware of, but it is a legal issue that is out there, and the Commission should be aware of and could be used as a basis for challenging the change. 3. The decision to do this is reasonably related to one of the Commission's police powers; the power to regulate land use to promote public health, safety, welfare, etc. Look at the record and look at what is the public interest that the Commission is trying to advance by doing this. 4. Must consider whether the change is consistent with the Plan of Conservation and Development (POCD).

-A question received outside of this meeting was are the recommendations of the POCD binding to the Zoning Commission for this? There are 2 different laws that come into consideration that require the POCD to be considered. Section 28 of the zoning regulations and statute 8-3b both require the Commission to consider the POCD.

-There will have to be specific findings made, on the record, about how what the Commission is proposing is consistent with the POCD.

-Because there is not a combined Planning and Zoning Commission, procedurally statute 8-3a(b) requires that 35 days before the Public Hearing, referral must be made to the Planning Commission who will report back as to whether they feel this is consistent with the POCD. If they fail to act, it is considered an automatic approval. If they object it changes the vote requirement of the Zoning Commission from a simple majority to a 2/3 majority.

-The Planning Commission report is not binding to the Zoning Commission. The report must be part of the record of the Public Hearing, but the Zoning Commission could choose not to agree with them, with a 2/3 vote.

-The following is Q & A

Q: Mr. Foley: If someone presently owns an undeveloped two (2) acre lot and the zone is upped to a five (5) acre minimum, would they still be able to build a house on that lot?

A: As long as that is a permitted use in that zone.

Q: Mr. Foley: What is the point of the upzone then? What do we gain?

A: Attorney Bleasdale: It depends on what the Commission's goal is.

A: Mr. Mulholland: Should someone want to do a subdivision; they would need to do 5 acres lots instead of 2 acre lots. So large parcels could be divided into fewer, larger parcels instead of more, smaller parcels.

Q: Mr. Peck: If someone wanted to put an addition on a house that had become nonconforming with this change, could they do that, perhaps with a variance?

A: Mr. Mulholland: 21.1.5 No nonconforming dwelling shall be enlarged or extended unless the enlargement or extension conforms to the requirements of the district in which it is situated. EXCLUDED FROM THIS PROHIBITION ARE: A. Additions of a second story to one-story single-family dwellings. B. Conversions of single-family one-and-one-half story dwellings to two-story dwellings, either by means of dormers or upward extensions of existing sidewalls. C. Conversions to two stories of one-story appendages to two-story single-family dwellings. 167 NONE OF THE FOREGOING ADDITIONS, EXTENSIONS, OR CONVERSIONS SHALL: D. Extend beyond the perimeters of the existing buildings. E. Exceed the vertical projection limits specified elsewhere in these regulations. F. Alter the single-family status of the dwellings, and G. Result in a separation of less than 15 feet from the sidewalls of any other dwelling. Essentially, all you would have to do is meet setbacks and lot coverage. Atty Bleasdale agreed.

Q: Ms. Jett-Harris: Have you read the POCD Matrix?

A: Yes.

Q: Mr. Peck: How would you suggest we make sure the Planning Commission is given a clear picture if the Zoning Commission is unable to present this to them to avoid any confusion?

A: If the Planning Commission wanted, Mr. Mulholland could attend a meeting to field questions. Additionally, they could question Mr. Goeschel who could forward those on to Mr. Mulholland.

Q: Mr. Foley: Hypothetically, if a landowner has a property that currently could be subdivided into 5 lots and then the rezone is done and this person can now only subdivide into 3 lots, because that is a significant loss in value, does this landowner have any remedy? Could he ask for some sort of reimbursement for destruction of value?

A: As a hypothetical, probably no, but someone like that could challenge the Commission's decision to rezone and that should be one of the things considered in the record when determining if there is a reasonable basis to support.

Q: Mr. Foley: Has anyone ever sued a town, and the Zoning Commission, for outright destruction of value, for property that was previously worth half a million dollars and is now worth a quarter of that?

A: Yes, people have sued but considering the way the nonconforming Section 21 is written, it gives more protection than many other towns give.

Q: Mr. Liska: Wouldn't larger lots open more 8-30g applications?

A: Mr. Mulholland: They are open to that anyway.

-Attorney Bleasdale left the meeting.

5. Disposition of Minutes

Approval of Minutes of 2/6/2025 Regular Meeting

MOTION 1

Ms. Jett-Harris moved to approve the Minutes of the 2/6/2025 Regular Meeting as presented.

Mr. Foley seconded the motion.

Motion passed 6-0-0.

6. Old Business

There was none.

7. Subcommittee Reports

7-a Text Amendment Mixed Use CA Zones

-Mr. Peck stated that parts of the CA Zone being handled like the CB Zone regarding Mixed Use projects. The basis is keeping CA Zone the same and taking Boston Post Rd and Black Point Rd and assigning the CB Zone Mixed Use Regulations to those sections only. Flanders Rd and W Main St will stay the same.

-Mr. Mulholland noted it is essentially the same as the CB Zone but only assigned to Boston Post Rd and Black Point Rd (the CA Zone) as noted in the memo (Attachment 1)

-Mr. Peck stated that on the (Boston) Post Rd, there remain some historical buildings that it would be nice to preserve. The intent is to stop the historic buildings from coming down to put up larger more modern buildings. Looking to Black Point Rd, it would stop the tear down of perhaps 3 residences in order to put up larger more modern structures.

-Ms. Thurlow noted the same footprint would have to be kept should something come down to be rebuilt.

-Ms. Markovitz asked how far along Boston Post Rd and Mr. Peck responded it would be the length of the CA Zone.

-Mr. Mulholland showed the Commission, on the large map, what would be affected. He also noted that a current structure could be removed, however, the replacement structure would have to keep the same footprint. Mixed Use could be placed there; however, it would likely mean a single retail space below with 1 or perhaps 2 apartments above.

-Mr. Peck also stated that it would maintain what is there and keep truly affordable apartments in East Lyme.

7-b RU-80 Redistricting

-Ms. Jett-Harris read a few lines from the article written by Nick Sambides Jr 1/3/2025 titled "Report Calls Water Protection the Greatest Environmental Engineering Challenge the State Has Ever Faced". The point of making the zone change is to protect Well 5 that is not contaminated at all.

8. New Business

8-a Application of Eric. S Parker, Esq for Proposed Text Amendment to Section 20.26, by adding Subsection M, of the East Lyme Zoning Regulations.

Ms. Thurlow asked Mr. Mulholland to schedule the Public Hearing.

8-b Any business on the floor, if any, by majority vote of the Commission.

MOTION 2

Ms. Jett-Harris moved to hold a Public Hearing to change the current RU-80 Zone to a new RU-200 Zone. No current permitted uses, nor special permitted uses, will change. The lot size will change to a minimum of 5 acres (200,000 square feet). To move the subcommittee on rezoning the northern section of the RU-80, shown in white on the Zoning Map, from 2 acre zoning to 5 acre zoning, along with a Text Amendment.

Ms. Kalal seconded the motion.

The current motion is to advance the topic to Public Hearing.

Motion passed 6-0-0.

Ms. Thurlow asked Mr. Mulholland to schedule the Public Hearing and to send the Referrals out.

MOTION 3

Mr. Peck moved to a Public Hearing on the proposed Mixed Use CA Mixed Use Commercial Use Text Amendment as presented

Ms. Jett-Harris seconded the motion.

Motion passed 6-0-0.

Ms. Thurlow asked Mr. Mulholland to schedule the Public Hearing and to send the Referrals out.

Affordable Housing Appeals Moratorium Discussion: -Mr. Peck is not against affordable housing but is against the State of CT telling the Commission what to do, he would like to use the Zoning Regulations that the Commission has carefully crafted.

-Mr. Foley wanted to move to refer to First Selectmen.

-Ms. Thurlow agreed with Mr. Peck.

-Ms. Markovitz agreed with Mr. Peck.

-Ms. Kalal agreed with Mr. Peck.

-Ms. Jett-Harris agreed with Mr. Peck.

MOTION 4

Ms. Markovitz moved to recommend to the First Selectman that the Town apply for a Moratorium on Affordable Housing Appeals.

Ms. Jett-Harris seconded the motion.

Motion passed 6-0-0.

8-c Clarification of Outdoor Dining Regulations

-Mr. Mulholland stated that there were issues brought forward recently as to what was considered an umbrella regarding outdoor dining. He proposed a Text Amendment to the Zoning Regulations for clarification of such (Attachment 2). There was also a proposal to prohibit outdoor speakers which may become a nuisance.

-Ms. Jett-Harris asked if plastic was allowed.

-Mr. Mulholland noted that Skipper's predates the outdoor dining regulations, and their plastic walls predate the regulation and additionally they have the parking to accommodate the enclosed space. He also noted that cleaner wording helps to eliminate any ambiguity.

-Mr. Peck wondered if there had been complaints (about noise) and could the renewal process slow down to address them and noted a problem with disallowing speakers but would rather deal with complaints upon renewal.

-Mr. Mulholland noted the complaints were recent and was trying to anticipate complaints.

-Mr. Foley noted that living in a commercial district lends itself to hearing more commercial type sounds such as speakers.

-There was discussion regarding umbrella shapes and logos.

MOTION 5

Ms. Jett-Harris moved to accept the changes of the proposed Text Amendment, less the paragraph regarding speakers.

Mr. Peck seconded the motion.

Mr. Foley voted against the motion.

Motion passed 5-0-1.

8-d Correspondence

There was none.

9. Public Delegations

There was none.

10. Zoning Official

-Mr. Mulholland noted that Dad's Restaurant is progressing and should be open soon, definitely for the season. The deck is bigger but there was one on the east side which has been abandoned.

11. Comments from Ex-Officio

-Ms. Hardy gave a history of the decision to have separate Zoning and Planning Commissions. The BOS appointed Kevin Mills as Planning Commission Alternate. The Brookside Museum applied for a \$20,000 State Historic Preservation Grant. The Open Space Twin Valley Lakes Subdivision has been withdrawn pending some technical documentation to be done. The State of CT nip bottle deposit has given the town \$52,730 which has been used as the following: \$14,500 to Parks & Rec to replace trash receptacles on Main St. \$38,230 to be used to hire for clearing & hauling away debris from the catch basins on the 118 miles of town approved roads.

-Ms. Jett-Harris wondered if that money could be used towards bike racks. She also wondered about a \$5000 door which was placed in the HR Office.

-Ms. Hardy noted that the state determined which types of projects the money could be used for. She could not comment on the door.

12. Zoning Board Liaison to the Planning Commission

Mr. Liska attended the 2/11/2025 meeting and gave the following report:

-6 acres on Pattagansett Lake is going to be subdivided into 3-2 acre lots.

-Text Amendment that was referred from the Zoning Commission regarding the new Special Use SU-EMC

Ms. Markovitz will attend the 3/11/2025 meeting.

13. Comments from the Chairman

-Ms. Thurlow recapped:3 Public Hearings for Bill for 2 Text Amendments & Zone Change

-8-30g Moratorium will be recommended to BOS

14. Adjournment

MOTION 6

Ms. Markovitz moved to adjourn the Regular Meeting of the East Lyme Zoning Commission at 9:10PM.

Ms. Jett-Harris seconded the motion.

Motion passed 6-0-0.

Respectfully submitted,
Jessica Laroco,
Recording Secretary

Town of



East Lyme

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Zoning Department

February 6, 2025

MEMO TO: East Lyme Zoning Commission

RE: Proposed Text Amendment
Mixed Use- CA Commercial Zones

FROM: W. Mulholland, Zoning Official

As the Commission is aware, its subcommittee on Mixed Use has been working on a method to control use in the CA Zones. In 2023, the Board modified its Mixed Use Regulations in the CB Commercial Zone. The subcommittee's goal is to better regulate the use and to preserve certain areas of the community that have areas of historical value. To achieve that purpose, it is specifically proposed to amend Section 8, CA Commercial District, of the Zoning Regulations.

Presently, Mixed Use is regulated as a Special Permit Use in the CA Zone under Section 8.2.2 of the Regulations. This section states:

8.2.2 Mixed Use Dwelling Units - Dwelling units, limited to mixed use situations in which dwelling units are contained within a building dedicated principally to a permitted commercial, non-residential use. A portion of the jointly used building committed to dwelling units shall not exceed 50 percent of the improved floor area. Sub-grade floor area is not to be considered in this calculation.

Notwithstanding the provisions of Section 8.3.6, parking shall be provided based upon the greater of the calculation for the commercial portion of the premises or the residential calculation as provided in Section 22.1.3, plus fifty (50%) percent of that for the use requiring the lesser calculation.

Mixed Uses are also subject to Section 25, Special Permits, and Section 25.5, Table of Minimum Controls, for Special Permits. A brief review of this Table finds that the Commission adopted modified Mixed Use controls for CB Zones in May of 2023. They state in full:

- | | | |
|------------------|----------------|---|
| <u>Mixed Use</u> | <u>CB Zone</u> | <ol style="list-style-type: none"> 1. Second floor residential units over existing 1st floor commercial uses in existing building. 2. Square footage to be 'no greater' than the existing 1st floor area. 3. Second floor residential units may be added as a new second floor addition to the existing one- |
|------------------|----------------|---|

story building.

4. Parking in accordance with Section 22.
5. Height per Section 9.
6. Subject to Section 34, Architectural Design Review
7. Municipal Sewer & Water must be provided.

Further, Mixed Use is defined in Section 1.50 of the Definitions Section and states:

- 1.50 MIXED USE DEVELOPMENT – A building or group of buildings each of which shall be devoted to a commercial use along the street line on the ground floor and at least one upper floor, or portion thereof, shall be devoted to residential use. For the purposes of this definition, parking shall not be considered a commercial use.

It is specifically proposed to delete Section 8.2.2 and replace with the following:

- 8.2.2 Mixed Use Dwelling Units-Existing buildings only. Dwelling units, limited to mixed use situations in which dwelling units are contained within a building dedicated principally to a permitted commercial, non-residential use. A portion of the jointly used building committed to dwelling units shall not exceed 50 percent of the improved floor area. Sub-grade floor area is not to be considered in this calculation.

Add “CA Zone” to the existing Mixed Use controls on Section 25.5 which would be subject to items 1-7 (above) making the Mixed Use Regulations similar in the CB & CA Zone.

-Add the following:

Within the CA Zone, Mixed Use is allowed, in the following areas:

1. From the intersection of Black Point Road and Main St, southerly to the intersections of Crossley Court and the intersection of McElaney Drive.

From the intersection of Boston Post Road, Chesterfield Road and Flanders Road, westerly, including all of the CA Zoning District, to the westerly termination of the district at East Lyme Assessor’s Map 30.1 Lot 58 and easterly from said intersection to the terminus of the zone at lots 18 & 19 on East Lyme Assessor Map 32.1

In conclusion, the Commission should carefully evaluate their view of Mixed Uses. At question is whether the Board wants to be more restrictive in its control of Mixed Use as reflected in this proposal.

Town of

Zoning Department



East Lyme

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MEMO TO: East Lyme Zoning Commission
FROM: William Mulholland, Zoning Official
RE: Proposed Housekeeping Zoning Regulation Amendment
Outdoor Dining Section 20.25
DATE: February 20, 2025

During a recent Zoning Commission meeting, a member of the public questioned the interpretation of a section of the Board's Outdoor Dining Regulations, referenced above. Specifically, the primary focus was on the prohibition against enclosing or converting a restaurant outdoor dining area. As the Commission is aware, the regulations governing outdoor dining were drafted and adopted after much discussion, debate and deliberation. The Board was very careful in crafting the regulations to promote outdoor dining while also working to develop regulations that ensured such areas were not eventually covered or enclosed to form new indoor dining space. Given that outdoor dining areas are not required to have on-site parking, enclosing them would contribute to a parking shortage, particularly in the Niantic Village District.

Presently, the regulations only allow umbrellas in these areas. Because the language in the code is ambiguous to some, I am proposing the following text amendment for the purpose of clarifying the regulation. Therefore, it is specifically proposed to delete the 1st paragraph in Item L of the existing code which states:

- L. Outdoor dining areas shall not be enclosed either by permanent or temporary structures, tents or buildings. It may be established under a covered porch area which is an integral part of the building in which a restaurant operates.
Permitting Process:
 1. The special permit for establishments which serve alcoholic beverages under this section shall be valid for one year from the date of approval and may be renewed for a period not to exceed one (1) year subject to an approval of a special permit.
 2. Permits for establishments which do not serve alcoholic beverages, shall be valid for three years from the date of approval and may be renewed subject to an approval of a permit by the Zoning Official.

It is proposed to replace it with the following:

- L. Outdoor Dining areas shall not be enclosed by permanent or temporary buildings or structures.
 1. Covers, canopies, tents, sunshades, sail shades, and similar structures are not permitted.
 2. Only circular umbrellas, a minimum of seven (7) feet above the surface with a minimum diameter of seven (7) feet and a maximum of nine (9) feet and properly weighted to prevent dislodgement from winds are allowed. Such umbrellas shall be of fabric material and shall not display any advertising, either of products or branding, of any kind.

3. Tables and chairs shall be of durable commercial grade product, properly weighted, to prevent displacement by wind.
4. Any umbrella proposed for an outdoor dining area shall be included in all applications.
5. All applications shall include any and all forms of lighting.

In addition, it is also proposed to delete the following language from Section G: "Outdoor public address system and outdoor speakers may be permitted during designated hours as approved by the Zoning Commission". It has become apparent that these systems and speakers seem to be more of a nuisance than an asset to the neighborhoods in which they operate.