

# Facts Regarding Our Harvest Outside Seating Area

- Application reviewed by Building Committee on August 14, 2020
- Outdoor Seating Areas are addressed in the Town of Fenwick Town Code Chapter 160-5A (9)

In summary,

- **Outside service areas are permitted to be no more than 700 square feet with seated dining only in conjunction with a restaurant or eatery**
- **No part of any outside service area may be located in any setback area and may not eliminate parking spaces to achieve sufficient space for outside service area.**
- **No bar area is allowed in any outside seating area.** This is different than the rules applied to a hotel because these regulations apply only to restaurants and eateries as defined in our ordinance.
- **Stand-up consumption of alcoholic beverages is not allowed in the permanent seated dining area, including any outside service area.**
- **Music or entertainment, live or recorded, shall not be allowed in any outside service area except for occasions approved by the Town Council.**
- **Hours of operations for any restaurant or eatery outside service area shall be no earlier than 8:00 a.m. and no later than 11:00 p.m., including set-up and final clean-up.**

The entire Town Code Chapter is included below:

**(9) Restaurant or eatery as herein defined, subject to the following**

## **requirements:**

(a) Definitions. As used in this subsection, the following terms shall have the meanings indicated:

### **BAR**

A commercial establishment, not part of a restaurant, whose primary activity is the sale of alcoholic beverages to be consumed on the premises.

### **BAR AREA**

The floor space in any restaurant that is used primarily for the service or consumption of alcoholic beverages for patrons waiting to be seated in the permanent seated dining area. It shall include, but not be limited to, any bar counter and the contiguous floor and seating area where alcoholic beverages are dispensed or consumed, together with all other portions of the patron area except the permanent seated dining area, whether contiguous to the bar or not. A counter in a "bar area" where food is served is not considered part of the permanent seated dining area.

### **EATERY**

A commercial establishment where food is prepared and served to the public.

### **OUTSIDE SERVICE AREA**

**A porch, patio, deck or area of land or buildings which is not enclosed on all sides with permanent structural walls and roofing and which has a floor level no higher than three feet above ground level, is not more than 700 square feet in area and which is used for seated dining only in conjunction with a restaurant or eatery. No part of any outside service area may be located in any setback area and may not eliminate parking spaces to achieve sufficient space for outside service area.**

### **PATRON AREA**

The area of a restaurant open to the public as patrons and exclusive of kitchen, storage areas and restrooms.

### **PERMANENT SEATED DINING AREA**

The floor space in any restaurant where tables and chairs and/or booths are provided for serving complete meals to seated patrons. **The floor space of any outside service area shall not be included as part of a restaurant's permanent seated dining area.**

### **RESTAURANT**

A commercial establishment with a patron area of less than 4,000 square feet and which is regularly used and kept open for the purpose of serving complete meals, as referred to in the Delaware Code, to patrons for consideration and which has seating and tables for dining and suitable kitchen facilities connected therewith under the charge of a chef or cook. The service of only such foods as snacks, sandwiches, salads, pizza, hamburgers,

etc., at any time in the evening are not considered complete meals.

**(b) Requirements.**

- [1] No bar, as defined, shall be allowed in Fenwick Island.
- [2] **No bar area, as defined, shall be allowed in any outside service area.**
- [3] In-car or drive-through service may not be provided by a restaurant.
- [4] A restaurant may have a bar area as defined where stand-up consumption of alcoholic beverages for patrons waiting to be seated is allowed, provided that the number of patrons in the bar area does not exceed the Fire Marshal's occupancy limit for that area and such bar area is located on the same floor level as the permanent seated dining area.
- [5] **Stand-up consumption of alcoholic beverages is not allowed in the permanent seated dining area, including any outside service area.**
- [6] All tables and chairs in the permanent seated dining area of a restaurant shall be maintained and located in an accessible and usable configuration at all times and may not be temporarily moved so as to increase any bar area.
- [7] **Music or entertainment, live or recorded, shall not be allowed in any outside service area except for occasions approved by the Town Council.**
- [8] All windows and doors of any restaurant or bar area shall remain closed except for the passage of patrons when music is being played.
- [9] A minimum of 85% of the patron area must be dedicated as a permanent seated dining area.
- [10] A restaurant may not serve alcoholic beverages in the morning before 9:00 a.m. or in the evening later than 1:00 a.m., or later than the time when the offering of complete meals in the permanent seated dining area ends, whichever is earlier. **Hours of operations for any restaurant or eatery outside service area shall be no earlier than 8:00 a.m. and no later than 11:00 p.m., including set-up and final clean-up. In the case of a restaurant that includes outside service area, such outside service may be suspended or revoked if there have been three or more cases during a calendar year of violations of any Town ordinances. Oral and written notice of each such violation will be given to the licensed restaurant owner. Such revocation may be immediate, deferred to the entire season for the following year, or both.**



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