



## **CITY PLANNING COMMISSION**

March 30, 2015/Calendar No. 9

N 150109 ZRK

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**IN THE MATTER OF** an application submitted by Cherry Hill Gourmet Market pursuant to Section 201 of the New York City Charter for an amendment of the Zoning Resolution of the City of New York, concerning use regulations in Article IX, Chapter 4 (Special Sheepshead Bay District), Community District 15, Borough of Brooklyn.

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This application (N 150109 ZRK) for an amendment of the Zoning Resolution concerning use regulations in Article IX, Chapter 4 (Special Sheepshead Bay District) was filed by Cherry Hill Gourmet Market on September 9, 2014.

### **BACKGROUND**

Cherry Hill Gourmet Market is proposing an amendment to the Special Sheepshead Bay District (SSBD), Section 94-061 of the Zoning Resolution (ZR), to permit a Use Group 6 food store in Area B of the special district without a limitation on size and street frontage. The text amendment would facilitate the legalization of the Cherry Hill Gourmet food store. In addition, the text amendment would allow technical corrections to the language used in ZR 94-061 to describe permitted uses in Areas A-H.

Area B of the SSBD consists of the block generally bounded by the Belt Parkway Service Road to the north, Ocean Avenue to the east, and Emmons Avenue to the south and E.

19<sup>th</sup> Street to the west. Only one zoning lot (Block 8775, Lot 41) is located within Area B. The zoning lot is developed with the landmarked former Lundy's Restaurant building, a two/three-story structure located at 1901 Emmons Avenue within an R5/C2-2 zoning district, which, outside of the Special District, permits low-density residential development and a range of retail, service, community facility, and office uses.

In 1973 the City Planning Commission established the SSBD to promote and strengthen

the unique character of an approximately 20-block area located along Emmons Avenue and the adjacent side streets between Sheepshead Bay Road on the west to Knapp Street on the east, as a prime location for water-related commercial and recreational development. It also sought to encourage housing development in suitable areas, increase open space and other amenities as part of new development, and improve vehicular and pedestrian circulation throughout the district. The SSBD contains eight subareas (Areas A through H) with regulations governing development and permitted uses for each area.

Area B was established in recognition of the former thriving large restaurant located on the site. The original Lundy's restaurant opened in 1934. Until its closing in 1978, Lundy's was a local seafood favorite which, in its heyday, served 10,000 meals on a typical Sunday, as many as 15,000 meals on Mother's Day and approximately 2,500 on a typical weekday. In 1992, the Spanish Colonial Revival styled building was designated as a New York City NYC landmark. A smaller (700 seat) version of the restaurant reopened in 1995, but later closed in 2004 after a few unprofitable years. In Area B, Eating and Drinking Establishments (Restaurants) are permitted without limitations on size.

However, under the SSBD's existing use regulations, areas A, B, C, D and E limits other commercial uses to those listed in Use Group SB (ZR Section 94-062) and those listed in Section 62-211 (Water-Dependent uses), except for uses permitted under Section 94-063 (Uses permitted by special permit). Use Group SB uses do not include food stores and permitted uses are further limited to a maximum floor area of 3,500 square feet per establishment and to a maximum frontage per establishment at ground floor level of 35 feet when facing any plaza, Emmons Avenue, Sheepshead Bay Road, Ocean Avenue and Bedford Avenue. Areas F and G, which comprise twelve adjacent block frontages in the

eastern part of the district, allows all UG 6 uses, including food stores, without size limitations.

After the demise of Lundy's in 1978, the building was vacant for approximately 17 years. In, or around, 1995, the building was adapted as the Lundy Landing Shopping Center. The shopping center occupies the entire 43,450 square foot site and has 86 feet of frontage on Emmons Avenue, 104 feet of frontage on Ocean Avenue and 190 feet along Shore Parkway, and 45 unenclosed parking spaces with a curb cut on Ocean Avenue and one on East 19<sup>th</sup> Street. The building has a total of 50,636 square feet of floor area (1.16 FAR) and is two stories at its lowest level and three stories at its highest level. In addition to the Cherry Hill Gourmet, two other restaurants, offices and various retail businesses are located in the building. Cherry Hill Gourmet occupied the premises in 2007, and opened in 2009 as a food store and accessory restaurant. It occupies a total of 20,646 square feet of floor area with 14,230 square feet on the first floor and mezzanine for the food store and restaurant with seating for approximately 50 guests, and 6,416 square feet on the 2nd floor for accessory office space, bathrooms and storage spaces. In warmer months, it operates a 100-seat sidewalk café with waiter service on both the Ocean Avenue and Emmons Avenue frontages. There is an additional 1,288 square feet in the cellar used for refrigeration and mechanical equipment.

A review of Department of Building (DOB) records indicates that an Alteration Application was filed on August 27, 2007 to construct a food store with restaurant on the premises under Directive 14, self certification. Subsequent to objections issued by DOB and a reconsideration and supervisory plan exam, the application was approved and

building permits were issued on September 26, 2007. After numerous complaints and the violations that followed, a use violation was ultimately issued on March 4, 2010, recognizing that the food store was not a conforming use in Special Sheepshead Bay District. To date, the applicant has cured virtually all outstanding construction and landmark violations, either paying fines or having had them dismissed. The remedy to cure the remaining use violation is to modify the SSBD to permit a food store, a prerequisite to obtaining a new legal Certificate of Occupancy, or to discontinue the current use.

This application proposes a text amendment to ZR § 94-061 which would modify permitted uses in Area B of the Special Sheepshead Bay District (SSBD), to allow a UG6 food store without limitations on floor area or frontage per establishment. In addition, the text amendment would allow for some technical corrections to language in ZR 94-061 to clarify language used to describe permitted uses in Areas A-H. The text amendment would facilitate the legalization of the existing 20,646 square business as a food store and restaurant on the 1<sup>st</sup> floor and mezzanine (14,230 square ft.) and accessory office and storage spaces on the second floor (6,416 square feet).

The surrounding area is predominantly developed with commercial uses. The adjacent block to the west of the shopping center (Block 8773/Area A) was formerly occupied by the Greco diner, a longstanding eating and drinking establishment and an accessory parking lot, which was demolished and is now the site of a new proposed mixed use development. The adjacent block to the east (Block 8778/Area C), is improved with two 1- and 2-story buildings containing various UG 6 eating and drinking establishments.

Further east, a portion of Area D (Block 8779) is developed with the 3-story Seaport Plaza building which was constructed pursuant to an approval by the Board of Standards and Appeals (BSA Cal. No. 552-91-BZ, Vol. II, adopted July 1995), and contains various eating and drinking establishments, retail clothing stores, and an accessory parking garage for 182 cars.

Directly north of the project site is the Belt Parkway and service road. The blocks located north of the Belt Parkway (Blocks 8772, 8774, 8776, and 8777), are improved with a mix of commercial and residential uses. Located southeast of the Project Site are the Sheepshead Bay Piers operated by the NYC Department of Parks and Recreation. The ten fixed piers offer yearly and transient dockage for commercial charter vessels, including dinner and special events cruises as well as charter fishing. Directly west of the SSBD (Block 8771) is predominantly improved with mixed use buildings 2- to 7- stories with ground floor retail and residences above.

The project site is located in the Coastal Zone and within the FEMA Preliminary Flood Insurance Map (PFIRMs) area, or the 100-year flood zone. The Coastal Zone is generally bounded by Emmons Avenue to the south and Shore Parkway to the north. Emmons Avenue and Shore Parkway, which carry eastbound and westbound traffic, and Ocean Avenue, which carries southbound and northbound traffic, are wide streets and busy commercial thoroughfares.

The area surrounding the project site is well-served by public transportation, with BM3, B4, and B49 bus lines running along Emmons Avenue, Ocean Avenue, East 19<sup>th</sup> Street, and Sheepshead Bay Road. The Sheepshead Bay subway stop, serving the B and Q lines,

is located northwest of the Project Site.

## **ENVIRONMENTAL REVIEW**

The application (N 150109 ZRK) was reviewed pursuant to the New York State Environmental Quality Review Act (SEQRA), and the SEQRA regulations set forth in Volume 6 of the New York Code of Rules and Regulations, Section 617.00 et seq. and the New York City Environmental Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order No. 91 of 1977. The designated CEQR number is 15DCP058K. The lead is the City Planning Commission.

On March 27, 2015, a Revised Environmental Assessment Statement (EAS) was issued which describes and analyzes modifications to the Proposed Actions. The Revised EAS concluded that the proposed actions with modifications would not result in any new or different significant adverse environmental impacts not already identified in the previous Negative Declaration. A Revised Negative Declaration was issued on March 30, 2015. The Revised Negative Declaration reflects the modified application.

## **PUBLIC REVIEW**

On November 3, 2014, this application (N 150109 ZRK) was duly referred to Community Board 15 and the Borough President for information and review in accordance with the procedures for non-ULURP matters.

### **Community Board Review**

Community Board 15 held a public hearing on this application (N 150109 ZRK) on

February 3, 2015, and on February 24, 2015, by a vote of 20 in favor, 5 opposed and 2 abstaining, adopted a resolution recommending approval of the application, subject to the following stipulations:

1. "Cherry Hill must not expand and must leave the existing square footage."
2. "Cherry Hill must maintain both indoor and outdoor seasonal seating for dining and must retain existing parking."

### **Borough President Review**

This application (C 150109 ZRK) was considered by the Borough President of Brooklyn, who issued a recommendation on February 4, 2015, disapproving the application, subject to the following conditions:

That ZR 94-061 (b) be modified to allow in Area B, food store use, not to exceed 15,000 square feet of combined non-accessory floor area in Sub District B (not per establishment) pursuant to a newly created Special Use Permit (through either the Board of Standards and Appeals or the City Planning Commission) for a term not to exceed ten years provided that such food store contains additional area containing:

- a. an accessory seated area to dine for not less than 40 patrons;
- b. seasonal (a minimum of April 1st through October 31st, or longer if season permits) unenclosed sidewalk café seating for not less than 50 patrons (subject to the Department of Consumer Affairs), per establishment; and,
- c. required parking provided without waiver at one space per 350 sf of food store use."

"Be it further resolved:

1. That the Department of Transportation, in consultation with Community Board 15 (CB 15) and locally elected officials, undertake a traffic study of Ocean Avenue between the Shore Parkway eastbound service road and Emmons Avenue to determine if a north- and/or south-bound travel lane might be eliminated to facilitate angled parking spaces as a means to increase the supply of curbside parking. If such a study indicates that there would not be a traffic impact, then subject to input from CB 15 and locally elected officials, the Department of Transportation would implement the roadway changes and curbside signage requirements.

2. That the Department of Environmental Preservation, in consultation with CB 15 and locally elected officials, undertake a study to determine the appropriateness of incorporating bioswales along the curb adjacent to Lundy's Landing Shopping Center's parking lot, and then if deemed cost-effective, the Department of Environmental Protection should implement the construction of bioswales.”

### **City Planning Commission Public Hearing**

On January 21, 2015 (Calendar No. 1), the City Planning Commission (CPC) scheduled February 4, 2015 for a public hearing on this application (N 150109 ZRK). The hearing was duly held on February 4, 2015 (Calendar No. 17). There were no speakers at the public hearing and it was continued until February 18, 2015. The continued public hearing was duly held on February 18, 2015 (Calendar No. 23). There were 22 speakers at the continued public hearing, 13 who spoke in support of the application and 9 who spoke in opposition.

Four speakers from the applicant's legal and technical team spoke in favor of the application including: Cherry Hill's land use attorney, general counsel, architect and the Construction Manager for store build-out. The land use attorney stated that allowing a food store in the SSBD Area B was appropriate, as unlimited size food stores are already permitted in SSBD Areas F & G and in the underlying C2-2 district mapped city-wide. The general counsel spoke about the ownership interests, identifying the owner/overlandlord (Sheepshead Bay), tenant/landlord (Lundy's Management) and Cherry Hill Gourmet as subtenant. He testified that both the landlord and overlandlord each supported the application. He further read a letter from the attorney for the overlandlord which said that there was “no objection to the text amendment”. They spoke about the overwhelming support of Community Board 15 and how the area's

demographics have changed with a larger eastern-European population that supports a store that provides fresh fruits, vegetables and specialty items. They stated that the building was neglected and in disrepair before it was renovated by the current owner. They also stated that, since the existing building exceeds the permitted floor area regulations of the underlying zoning and is a landmark, it would not be possible to expand the building into the existing parking lot.

There were four workers from the store, who spoke in favor of the application, including: two Co-Managers, the Kitchen Manager and a general worker. The workers spoke about serving the community with quality food for five years, the employment of 60 people during the year and up to 200 in the summer months. They said that there are 45 seats in the year-round café and 100 outdoor seats in the season sidewalk café, but the business could not be supported by the restaurant alone. They testified that no landmarked features on the building were removed by Cherry Hill, but that some of the landmarked features may have been removed by the owner during the renovation of the building. They said that they were not aware of any outstanding construction violations against Cherry Hill, only the current use violation which is seeking a remedy under this application.

There were five residents from the area who spoke in favor of the application. They spoke about how the area has changed and the value of both fresh and prepared ethnic specialty foods for the eastern-European community. They stated that Cherry Hill has high quality prepared meals for take-out, just like a restaurant. One resident, a rabbi, spoke of the generosity Cherry Hill in donating food for the poor in the community, upon

his first request, loading a van with fresh fruits and vegetables. He further stated that from the outside, you would not know whether the store was a restaurant or specialty food store, nor did he believe it should ultimately matter.

There were five speakers from three local civic organizations who spoke in opposition to the application including: the Bay Improvement Group, Manhattan Beach Community Group Inc. and the Madison-Marine-Homecrest Civic Association. The civic organization representatives stated their disappointment that the applicant occupied the space illegally, disregarding the regulations of the SSBD. Further, they alleged that the applicant continued to violate stop work orders issued by the Buildings Department, and continued to operate in bad faith, and had a record of substantial unpaid fines. They stated their belief that both Community Board 15 and the Borough President had been wrong in allowing an unscrupulous business to operate. In addition, they stated that Community Board 15 did not have a complying recommendation, since a quorum was not present for the vote. Several speakers also stated their opinion that the application is a spot zone, not part of a plan for the area and that the CPC should enforce the SSBD regulations and to do otherwise is a bad precedent for the future. They stated their belief that a variance and not a text amendment to the SSBD would have been the more appropriate application process in an attempt for zoning relief.

A speaker from the Historic District's Council spoke in opposition to the application. She stated that the landmark was initially desecrated and that the applicant violated the integrity of the law and the SSBD. She further stated that the Historic District's Council

does not support what she described as “temporary re-use of landmarked buildings”, rather they would like to see the use regulations of the SSBD remain for the long term as they are inextricably linked to maintaining the integrity of the Lundy’s building.

One store owner and one resident from the area spoke in opposition to the application. The owner testified that he owns and operates a specialty store on E. 18<sup>th</sup> Street and Avenue Z. He spoke about his adherence to the law and how the illegal store unfairly competes for a similar customer base. The area resident similarly spoke of the illegality of the Cherry Hill store and its conflict with permitted zoning.

A representative for the Councilmember from the 48<sup>th</sup> District spoke in opposition to the application. She stated that the Councilmember supported businesses that bring revenue and jobs into the community, but was in opposition to the broad scope of the proposed text and how it permits a food store of unlimited size. The councilmember was also concerned about the potential to affect other businesses in the existing building and would reject the text change in its current form.

There were no other speakers and the hearing was closed.

#### **WATERFRONT REVITALIZATION PROGRAM CONSISTENCY REVIEW**

This application, in conjunction with the application for the related action, was reviewed by the Department of City Planning for consistency with the policies of the New York City Waterfront Revitalization Program (WRP), adopted by the Board of Estimate on September 30, 1982 (Calendar No. 17), pursuant to the New York State Waterfront

Revitalization and Coastal Resources Act of 1981 (New York State Executive Law, Section 910 et seq.). The designated WRP number is 13-001.

The City Planning Commission, acting as the City Coastal Commission, having reviewed the waterfront aspects of this action, finds that the actions will not substantially hinder the achievement of any WRP policy and hereby determines that this action is consistent with WRP policies.

### **CONSIDERATION**

The Commission believes that the zoning text amendment (N 150109 ZRK), as modified, is appropriate.

The Special Sheepshead Bay District was established over forty years ago in 1973 with the goals to promote and strengthen the unique character of Sheepshead Bay as a prime location for waterfront related commercial and recreational development and to help attract a useful cluster of shops, restaurant and related activities which will complement and enhance the area. Another stated goal is to promote the most desirable use of land in this area and thus to conserve the value of land and thereby protect the City's tax revenues.

The proposed amendment to the Special Sheepshead Bay District (SSBD) would allow a Use Group 6 food store in Area B of the special district, thereby facilitating the legalization of the existing Cherry Hill Gourmet food store. In addition, the text

amendment would allow technical corrections to the language used in ZR 94-061 to describe permitted uses in Areas A-H.

The Commission recognizes the troubled history of the Lundy's building since the restaurant closed in 1978, marked by long periods of vacancy, neglect, misuse, failed leases and unprofitable businesses. The Commission believes that the renovation and adaptive re-use of the building facilitates the occupancy of an important historic landmark and conserves the value of the land.

The Commission has carefully considered resolutions and testimony provided by Community Board 15 and the Brooklyn Borough President and presented at the Commission's Public Hearing and appreciates the thoughtful nature of their consideration of this application and its greater implications. The neighborhoods encompassed within the Sheepshead Bay Special District owe much to its history of water-front related uses. Today's dynamic, mixed-use character of residential use, offices, and retail is testament to the role that the Special District has played in creating an energetic and desirable community in Sheepshead Bay.

Therefore, in order to ensure that a desirable mix of uses is retained, the Commission believes that a modification to the current text amendment to establish a size limitation of 15,000 square feet for a food store on a zoning lot existing on the effective date of this amendment is appropriate.

The modification addresses the Borough President's request to limit the food store use to a combined 15,000 square feet of non-accessory (or primary) floor area and the Community Board's request to limit Cherry Hill to the existing square footage, while not limiting existing and future dining areas. In accordance with their request to maintain parking, as this is an existing building, requirements for 45 parking spaces remain in force and the building cannot be enlarged into the parking lot because it is overbuilt. As far as the potential for angled parking on Ocean Avenue to be reviewed by NYCDOT and consideration for bioswales in the sidewalk along the curb at Lundy's parking lot by NYCDEP, these issues are beyond the scope of the Commission review and should be discussed with the respective city agencies.

The Commission cautions that its approval of this text amendment, as modified, should not be viewed as a signal of an abandonment of the current zoning framework. It is essential that property owners seek to continue to lease spaces to conforming uses in an effort to reinforce the mix of uses that satisfies the provisions of the zoning and historic conditions of the neighborhood. However, the record here indicates that there have been long stretches of vacancy, and a history of failed leases and unsuccessful businesses due to the building's size and landmarked status.

The Commission has reviewed the recommendation of the Borough President regarding the establishment of a new Special Permit, as a potential mechanism to review and regulate the potential legalizing of the existing food store use. It is the Commissions' view that a new special permit is beyond the scope of the existing application and would

require new applications to both amend the SSBD district text regulations and for the special permit itself with the applicant demonstrating their compliance with applicable findings. Also, the Commission notes that the applicant could have sought relief under an existing special permit, pursuant to ZR 74-711, for Landmark designated buildings, which include the Lundy property but chose not to do so.

The Commission further recognizes the SSBD, which does not currently permit food stores in Areas A-E, does permit food stores in Areas F and G (some 12 block fronts) without regard to size or limitation. In addition, specialty food stores and supermarkets are permitted city-wide in the underlying R5/C2-2 districts with no limitation on size other than the regulations that govern maximum FAR. The Commission believes that food stores, limited in size, would be appropriate in Area B and consistent with the goals of the Special Sheepshead Bay District.

## **RESOLUTION**

**RESOLVED**, that the City Planning Commission has determined that the action described herein will have no significant adverse impact on the environment; and be it further

**RESOLVED**, that the City Planning Commission, in its capacity as the City Coastal Commission, has reviewed the waterfront aspects of this application and finds that the proposed action is consistent with WRP policies, and be it further

**RESOLVED**, by the City Planning Commission, pursuant to Section 200 of the New York City Charter, that based on the environmental determination, and the consideration described in this report, the Zoning Resolution of the City of New York, effective as of December 15, 1961, and as subsequently amended, is further amended as follows:

Matter in underline is new, to be added;

Matter in ~~strikeout~~ is old, to be deleted;

Matter within # # is defined in Section 12-10;

\* \* \* indicates where unchanged text appears in the Zoning Resolution

## **Article IX SPECIAL PURPOSE DISTRICTS**

\* \* \*

### **Chapter 4 Special Sheepshead Bay District**

\* \* \*

#### **94-06 Special Use Regulations**

In order to preserve the character of the area and to encourage waterfront and related #uses#, special limitations are imposed on the location, size and kinds of #uses# permitted within the Special District as set forth in this Section.

~~(2/2/11)~~

#### **94-061 Permitted residential, community facility and commercial U ~~uses permitted by right~~**

- (a) #Residential# and #community facility uses#

#Uses# listed in Use Groups 1, 2, 3 and 4 shall be allowed anywhere within the Special District, except as set forth in Section 94-065 (Restriction on ground floor use).

- (b) #Commercial uses#

In ~~a~~ Areas A, B, C, D and E, as indicated in Appendix A (District Map) of this Chapter, only those ~~commercial uses~~ shall be limited to those listed in Section 94-062 (Use Group SB), ~~and those~~ ~~uses~~ listed in Section 62-211 (Water-Dependent (WD) uses) from Use Groups 6, 7, 9 and 14, ~~except for and those~~ ~~uses~~ permitted ~~under~~ pursuant to Section 94-063 (Uses permitted by special permit), shall be allowed. In addition, in Area B, a food store, as listed in Section 32-15 (Use Group 6), shall also be allowed on a ~~zoning lot~~ existing on (effective date of amendment). Such food store shall be limited to one such establishment per ~~zoning lot~~ and shall be limited to 15,000 square feet of ~~floor area~~ utilized for the sale of food and non-food grocery products, and further such establishment shall be limited to an additional 6,500 square feet of ~~floor area~~ for ~~accessory~~ office and storage space. There shall be no limitation on the amount of ~~floor area~~ utilized for eating or drinking places as listed in Use Group SB, pursuant to Section 94-062.

In Area F, only ~~commercial uses~~ ~~permitted by~~ listed in Use Group 6 and those listed in Section 62-211 from Use Groups 6, 7, 9 and 14 shall be allowed within the underlying ~~Commercial Districts~~ boundaries.

In Area G, only ~~commercial uses~~ ~~permitted by~~ listed in Use Groups 6, 7, 8 and 9 and those listed in Section 62-211 from Use Groups 6, 7, 9 and 14 shall be allowed within the underlying ~~Commercial Districts~~ boundaries.

In Area H, except for ~~uses~~ permitted ~~under~~ pursuant to Section 94-063, ~~commercial uses~~ shall be limited to those listed in Section 62-211 from Use Groups 6, 7, 9 and 14 and the following ~~uses~~:

\* \* \*

The above resolution (N 150109 ZRK), duly adopted by the City Planning Commission on March 30, 2015 (Calendar No. 9, is filed with the Office of the Speaker, City Council, and the Borough President in accordance with the requirements of Section 197-d of the New York City Charter.

**CARL WEISBROD**, Chairman  
**KENNETH J. KNUCKLES, ESQ.**, Vice Chairman  
**RAYANN BESSER, IRWIN G. CANTOR, P.E., ALFRED C. CERULLO, III,**  
**MICHELLE R. DE LA UZ, JOSEPH I DOUEK, RICHARD W. EADDY,**  
**CHERYL COHEN EFFRON, BOMEI JUNG, ANNA HAYES LEVIN,**  
**ORLANDO MARIN, LARISA ORTIZ** Commissioners



**ERIC ADAMS**  
BOROUGH PRESIDENT

**THERESA SCAVO**  
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The City of New York  
**Brooklyn Community Board 15**



**BILL DE BLASIO**  
MAYOR

Richard Jacobs, City Planner III  
NYC Department of City Planning, Brooklyn Office  
16 Court Street, Suite 705  
Brooklyn, N.Y. 11241

Dear Mr. Jacobs,

At the February 3, 2015, Community Board 15 General Board Meeting, the Zoning Text amendment for Cherry Hill Gourmet, Application # N150109ZRK was approved with the following stipulations:

- Cherry Hill must not expand and must leave the existing square footage.
- Cherry Hill must maintain both indoor and outdoor seasonal seating for dining and must retain the existing parking.

We do realize this is an extremely controversial item within the community. Community Board 15 feels this is the best resolution possible.

Community Board 15 encourages businesses in our Community and we believe Cherry Hill enhances the economy of this District.

If you have any questions please feel free to call (718) 332-3008.

Sincerely,

Theresa Scavo



The City of New York  
**Brooklyn Community Board 15**



**ERIC ADAMS**  
BOROUGH PRESIDENT

**BILL DE BLASIO**  
MAYOR

**THERESA SCAVO**  
CHAIRPERSON

February 25, 2015

Richard Jacobs  
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22 Reade Street  
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Dear Mr. Jacobs,

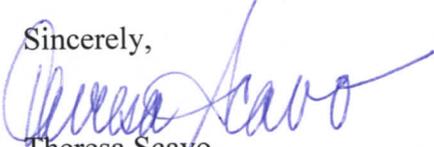
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During the General Board Meeting on February 24, 2015; with questions as to whether there was quorum present during the February 3, 2015 General Board Meeting; the Board chose to reaffirm the vote during the February 24, 2015. Please find enclosed copy of letter sent to Councilman Deutsch in response to the question of whether or not a quorum was present at the February 3, 2015 General Board Meeting.

The results are as follows:

**Cherry Hill Gourmet**  
Yes 20, No 5, Abstentions 2

Sincerely,  
  
Theresa Scavo  
Chairperson



**RECOMMENDATION FOR THE PROPOSED 1901 EMMONS AVENUE, CHERRY HILL GOURMET FOOD MARKET, 150109 ZRK**

The applicant, Cherry Hill Gourmet Food Market is seeking a Zoning Text Amendment to the Special Sheepshead Bay District (SSBD) to facilitate food use, without limitations in size, to be permitted in Sub-Area B. Additional technical clarifications in others parts of the SSBD are also proposed.

On January 15, 2015, the Borough President held a public hearing on the proposed zoning text change application.

There were nine speakers at the public hearing, with one in favor of the proposal - the sub-landlord, and eight against the proposal including Council Member Chaim Deutsch, representatives from the Bay Improvement Group, Gerritsen Beach Cares, Madison – Marine – Homecrest Civic Association, Manhattan Beach Community Group and Preserve Our Waterfront, the Brooklyn Borough Historian and an area merchant.

The speaker in favor just completed 20 years of a 49-year lease term. He acknowledged that Cherry Hill's operation is not in keeping with a food market being accessory to a restaurant, as filed with the Department of Buildings. If Cherry Hill vacated the premises, it is uncertain how long it might take to secure a new tenant. The sub landlord is being sued for eviction due to having a non-conforming tenant and thus is proceeding to evict Cherry Hill, though the sub-landlord would prefer to have the zoning changed as it would allow the lawsuits to be dropped.

Council Member Deutsch noted his opposition to the proposed text because it is for the entire block of Sub-Area B. Other speakers noted that the Special Sheepshead Bay District is a waterfront destination and that its unique ambiance should be protected and preserved from inappropriate building for generations to come. Belief was expressed that no one should be bailed out as a result of breaking the law and that the proposal reflects spot zoning because it would provide for a different land use characterization, which is illegal and benefits one party as opposed to furthering a well-considered and comprehensive plan. If adopted, this proposed text change would destroy the SSBD by legalizing this food use. It raises further concern over the precedent that this would set for others to justify further modifying the SSBD. There was a belief that other restaurant operators, including national seafood chains, would be interested in opening restaurants in the space occupied by Cherry Hill. Temporary summer seating is not enough to be consistent with the SSBD. Concern was expressed that Cherry Hill's ongoing operation is negatively impacting other businesses in the area that are providing those same goods and services as the area includes two large supermarkets -- a food market similar to Cherry Hill and other smaller food stores. It was represented that stores legally zoned for food use in the area have experienced more than a 30 percent loss of business since Cherry Hill began its operations. One store has 81 employees who depend on the store's success for their livelihood. Further concern was expressed that the parking in the rear of the building might be changed to a non-parking use. Complaints were also made that the indoor café rarely has customers, therefore lacking a certain restaurant promotion within the SSBD. If the text change were approved, there should be a provision to revert to now permitted uses.

The representative for the applicant noted that the food market is an appropriate use for 'Sub-Area B' because the use contributes to the area. It is an anchor store to other businesses in the area. By reviving and maintaining business operations so quickly after Superstorm Sandy, Cherry Hill became a reliable destination for area residents. Cherry Hill management has worked with the community to become a business of good standing. Cherry Hill is committed to retaining the restaurant aspects of the food market and would be happy to work with City Planning to craft any language towards that end. The parking lot is an important aspect of the operation and is not at risk for being displaced as the Landmarks Preservation Commission would not likely approve modifications to the structure since the parcel already uses the maximum permitted floor area. Cherry Hill wants the parking lot to remain in operation.

Subsequent to the hearing the applicant's representative submitted a letter in an attempt to address inaccurate information that was stated at the Borough President's public hearing as well as note that Cherry Hill supports limiting the size of the food store to the area currently occupied by such use maintaining the current number of seats for accessory eating and drinking, and maintain the parking area.

#### **CONSIDERATION**

Community Board 15 (CB 15) approved the application with conditions pertaining to not exceeding the existing floor area of the food store size, and requiring a number of indoor and outdoor dining seating and parking lot be retained.

The SSBD is located in the Sheepshead Bay and Plumb Beach neighborhoods. It was established in 1973 to promote and strengthen the unique character of the district as a prime location for waterfront-related commercial and recreational development, to help attract a useful cluster for shops, restaurants, and related activities, as well as to encourage improvements to the District. The area encompasses an approximate 20-block area that extends along Emmons Avenue and is bounded by Knapp Street to the east and Sheepshead Bay Road to the west.

The SSBD seeks to encourage development that will strengthen and protect the unique character of the waterfront community. North of the fishing fleet wharves, commercial uses are restricted to waterfront and tourist-related activities, while new developments must provide widened sidewalks and plazas with sitting areas, landscaping, kiosks, and cafes.

SSBD contains an Area B designation that is limited to one full block within the special district.

In Area B, commercial uses are generally limited to those listed in Use Group SB. Use Group SB do not include food stores, and are further limited to a maximum floor area of 3,500 square feet (sf) per establishment and to a maximum frontage per establishment at ground floor level of 35 feet when facing any plaza, Emmons Avenue, Sheepshead Bay Road, Ocean Avenue and Bedford Avenue.

Within Area B is the former landmarked Lundy's Brothers Restaurant building, currently known as Lundy's Landing Shopping Center. Built in 1934, the Spanish Colonial Revival-style building, thought to be the largest restaurant in the country at its completion, was designated

as an exterior landmark in 1992. In 1995, a 700-seat re-creation of Lundy's opened but closed after several years. To some, this gave indication that Lundy's space is unsuitable for complying restaurant use. The existing space in the building exceeds the floor-plate size of most contemporary restaurants or other permitted uses on the property.

In 2007, Cherry Hill, located at 1901 Emmons Avenue, subleased a section of the building. The building contains several other eating and drinking establishments, a café, offices, and local retail businesses. The applicant solely seeks the adoption of the proposed text amendment to facilitate the continued use and legalization of Cherry Hill. No other changes to the building are proposed.

Cherry Hill occupies 14,230 sf on the first floor and approximately 6,420 sf on the second floor. The food market occupies approximately 11,600 sf, while the restaurant, accessory office space, and vacant space occupy more than 9,000 sf.

It is the Borough President's policy to support land-use actions that allow businesses to sustain jobs. He believes that a food store is an inherently appropriate amenity for the adjacent residential neighborhood, including food stores that cater to the expanding Russian community.

Cherry Hill currently promotes public health as a high quality gourmet specialty food market by selling healthy foods which serves shoppers from local, nearby and outside neighborhoods. With its breadth and quality of international offerings as well as its bilingual counter staff, it is much more than a regular supermarket.

Cherry Hill makes productive use of a portion of the building for which there is community debate over potential alternative uses. Regarding alternative tenancy, there is no guaranteed timeline for occupancy if Cherry Hill were to vacate; the building has a history of long term vacancies, and once sat unoccupied for 20 years. Occupancy of a successful use that helps to anchor the retail corridor by maintaining restaurant aspects in the SSBD on Emmons Avenue is far superior to an uncertain occupancy timeline. In addition, the two restaurants operating in the Lundy's Landing Shopping Center continues the restaurant presence within Area B.

In response to the claim that the proposed text would result in a spot zoning, the SSBD actually permits many retail uses. Since Cherry Hill is a retail use, the proposed text modification to permitted uses appears to be more of an extension of the zoning. As a food store, with a range of products made available to the community as well as its restaurant-like amenities, Cherry Hill is complimentary to uses that are appropriate in the SSBD. Cherry Hill's operation consists of providing products that are permitted for sale in the SSBD and its accessory dining aspects are consistent with eating and drinking establishments within the SSBD. Some of Cherry Hill's products that are permitted for sale within the SSBD but are outside of restaurant-use include bakery items, candy, ice cream, fish, and flowers.

Although this change benefits Cherry Hill, it also benefits surrounding residents and helps anchor the junction of Emmons Avenue businesses with those along Sheepshead Bay Road.

Sheepshead Bay Fruits & Vegetables Market claims losses of 30% of its business to Cherry Hill, though it is not evident what supports such representation. The Borough President

acknowledges that some of Sheepshead Bay Fruit & Vegetable Market's business may have been diverted to Cherry Hill as it is one-half mile north of Cherry Hill through competition, though that distance would not be expected to have too much overlap of customer base. In addition, these stores appear to only partially overlap in their product offerings, such as fruits and vegetables. Given the distance and partial overlap of merchandise, it is possible that there has been some loss of market share to Cherry Hill but difficult to elaborate as to the actual share of diversion.

While the Borough President sees the possibilities of permitting Cherry Hill's operation, he is concerned that the proposed zoning text change is being used to legalize a business operation that may have thought it started out operating in a legal manner, though has been deemed to not be operating consistent with filed plans. He believes it is not appropriate to grant unconditional permission to a business with known operations that are inconsistent with approved plans. The Borough President is also concerned that the zoning text change does not limit store size nor preclude additional food stores on the block. In addition, the text does not memorialize the indoor and outdoor seating at Cherry Hill or the continued use of the parking lot in the rear of Cherry Hill.

### **Need for Accountability**

Given the history of Cherry Hill operating in manners contrary to approved plans, the Borough President believes there is a need to have checks and balances to assure adequate operation of the food market consistent with the objectives of the SSBD. A special permit provides a means to ensure adequate performance of both indoor and outdoor seating areas as well as the retention of the parking as an amenity.

The Borough President believes that accountability would be achieved by restricting the proposal to a special permit with a ten-year term. Examples of special use permits with periodic need for renewal include: auditoriums (the Seaside Amphitheater in Coney Island with a ten-year term); physical cultural or health-related establishments; sand, gravel or clay pits; commercial beaches; commercial swimming pools; restaurants with entertainment, children's amusement parks; pre-fabricated fire stations; amusement arcades; indoor interactive entertainment facilities; or, where the Board of Standard and Appeals has fixed an appropriate term.

Through a special permit with its periodic reconsideration of findings, there would be assurance that adequate efforts are being made to successfully utilize both the indoor and outdoor seating aspects of the operation, as well as parking. Since special permit renewals require public review with public hearings, the term limit aspect provides accountability to the public.

### **Need for Food Store Floor Area Limitations**

The propose text has no limit to the size of a food store establishment and no limit on the number of food store establishments that could operate in the block of Sub-Area B.

The applicant believes that market conditions would not support a larger food store than currently exists. Cherry Hill opened in 2008 and has been in operation for approximately six years without need to expand or contract in order to remain financially viable. If the text amendment is approved, the applicant has expressed the unlikelihood that any other existing eating or drinking establishments, or other occupied office uses in the building, would convert

to a food store. However, that expression does not guarantee that there would be more space in the Lundy's Landing Shopping Center devoted to food store use.

The Borough President believes that it is not consistent with the SSBD to allow more food store floor area than what already is in use at Cherry Hill. He believes that through a special use permit, food store use in Sub-Area B could be explicitly limited to what is presently in use at 15,000 sf. Therefore, the Borough President believes that such size limit should be made a condition of the special use permit.

### **Need for Restaurant-Like Amenities**

Cherry Hill's operation often includes approximately 150 seats for eating and drinking – all apparently with available waiter service. Of the 150 seats, about 50 are indoor and 100 are outdoor along the frontages of Emmons and Ocean Avenues, used in a manner consistent with a Use Group 6 sidewalk café occupying approximately 2,000 sf.

The Borough President believes that Cherry Hill, under the proposed text, has no obligation to retain the restaurant seating aspects, both indoor and outdoor, as part of maintaining a food store use in the SSBD. The adaptive reuse and preservation of the historic Lundy's restaurant building that includes Cherry Hill's operation merely meets the goals of the SSBD when sidewalk café seating and an indoor dining room is guaranteed to be part of its operation.

Operating a restaurant with specific seating design is one of those uses advocated by the community. The Borough President would like to see language in the zoning text change that perpetuates the restaurant aspects within Area B of the SSBD.

In order to assure that the continued occupancy by Cherry Hill would serve to promote and strengthen the unique character of the SSBD and the surrounding area, it is important that Cherry Hill be legally obligated to not only maintain the infrastructure of tables and chairs through the Borough President's recommended special use permits, but to also demonstrate legitimate efforts to promote a vibrant and active restaurant seating area. This demonstration would justify a subsequent renewal of the special permit as its term approaches expiration.

Including such a finding as part of a special permit ensures the continued activation of the sidewalk and continuation of the in-premise dining consistent with the SSBD unique restaurant character. Therefore, the Borough President recommends that this seating requirement be part of the findings for the food store special permit in the SSBD.

### **Continuing Use of the Parking Facility**

Under the proposed zoning text amendment, the current parking facility that is adjacent to Cherry Hill is not required to keep the number of spaces that presently exist. Based on zoning at the time the building was constructed, it appears that it was not required then either. This parking facility, which contains about 40 parking spaces, provides a valuable service to customers of Cherry Hill and other nearby businesses. There are those within the community who have the impression that Cherry Hill would like to replace this parking lot with an open-air market. Whether or not there is any merit to claims that the accessory parking is at risk, the Borough President believes that this parking should remain as is, since it provides a valuable service to the business community and its patrons.

The Borough President is concerned that the parking lot could become a use that is not appropriate for the shared benefit of all the businesses within Lundy's Landing Shopping Center. The Borough President would like to see language that perpetuates this use as a parking lot for the shared benefit of all business, not just Cherry Hill. As a condition within the recommended special permit, the Borough President recommends that parking spots be required on the basis of one space per 350 sf of food store use.

Prior to consideration by the City Council, the Borough President believes that a text change to the SSBD incorporate a special permit as a means to allow a food store in Sub-Area B with conditions such as size limit, indoor and outdoor seating and accessory parking. Furthermore, the applicant should apply for such special use permit.

### **Traffic Study to Determine Opportunity for Curbside Parking**

The Borough President believes it is appropriate to increase the supply of parking in certain destination commercial areas where public transit is not adequate. The Borough President understands that all businesses in the SSBD would benefit with an increase in the number of available parking spaces. Ocean Avenue, along the east side of Cherry Hill, appears to have some potential for increasing the supply of street parking spaces. This section of Ocean Avenue has four lanes, with two running north and two running south. A survey should be conducted to determine if these four lanes could be reduced to three or two, with one or both outside lanes being converted to angled curbside parking as a means of increasing the number of available parking spaces. If a reduction to three or two lanes along this section of Ocean Avenue could still support existing traffic patterns, then the addition of such additional curbside parking would better support area businesses.

The Borough President calls upon the Department of Transportation (DOT) to investigate the possibility of increased parking, in consultation with CB 15 and locally elected officials, and to implement roadway changes and signage requirements as warranted.

### **Advancing Sustainable Energy and Storm Water Management Policies**

The Borough President seeks opportunities to promote the installation of bioswales. Bioswales defer storm water from entering the city's water pollution control plants. The Borough President believes that bioswales are more than just a community beautification tool; they significantly improve stormwater management while cleaning our environment. Bioswales are consistent with the recently announced Brooklyn Waterfront Greenway Stormwater Management Plan that is supported by the Borough President. Incorporating a bioswale within a few hundred feet of Sheepshead Bay -- an important and at-risk waterway -- will provide benefits towards improving overall sustainability and resiliency in this low-lying neighborhood and should be part of the Coney Island watershed-based stormwater strategy.

The Borough President calls on the Department of Environmental Protection to investigate the possibility of installing a bioswale along the curbside perimeter of the Lundy's Landing Shopping Center's parking lot in consultation with CB15 and locally elected officials.

**RECOMMENDATION**

Be it resolved that the Brooklyn Borough President, pursuant to Section 200 of the New York City Charter, recommends that the City Planning Commission and City Council, disapprove the land use action requested according to the following conditions:

That ZR 94-061 (b) be modified to allow in Area B, food store use, not to exceed 15,000 square feet of combined non-accessory floor area in Sub District B (not per establishment) pursuant to a newly created Special Use Permit (through either the Board of Standards and Appeals or the City Planning Commission) for a term not to exceed ten years provided that such food store contains additional area containing:

- a. an accessory seated area to dine for not less than 40 patrons;
- b. seasonal (a minimum of April 1st through October 31st, or longer if season permits) unenclosed sidewalk café seating for not less than 50 patrons (subject to the Department of Consumer Affairs), per establishment; and,
- c. required parking provided without waiver at one space per 350 sf of food store use.

Be it further resolved:

1. That the Department of Transportation, in consultation with Community Board 15 (CB 15) and locally elected officials, undertake a traffic study of Ocean Avenue between the Shore Parkway eastbound service road and Emmons Avenue to determine if a north- and/or south-bound travel lane might be eliminated to facilitate angled parking spaces as a means to increase the supply of curbside parking. If such a study indicates that there would not be a traffic impact, then subject to input from CB 15 and locally elected officials, the Department of Transportation would implement the roadway changes and curbside signage requirements.
2. That the Department of Environmental Preservation, in consultation with CB 15 and locally elected officials, undertake a study to determine the appropriateness of incorporating bioswales along the curb adjacent to Lundy's Landing Shopping Center's parking lot, and then if deemed cost-effective, the Department of Environmental Protection should implement the construction of bioswales.