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**The City of New York
Community Board 8 Manhattan
Small Business Committee
Joint with Zoning & Development Committee
Tuesday, April 13, 2021 – 6:30pm
*This meeting was conducted via Zoom.***

Please note: The resolutions contained in the committee minutes are recommendations submitted by the committee chair to the Community Board. At the monthly full board meeting, the resolutions are discussed and voted upon by all members of Community Board 8 Manhattan.

MINUTES:

Resolutions for approval:

Item 2 – Open Restaurants Proposal

Present: Alida Camp, Valerie Mason, Elizabeth Ashby, Anthony Cohn, Gayle Baron, Michele Birnbaum, Brian Correia, Billy Freeland, Craig Lader, Cos Spagnoletti, Marco Tamayo, Elaine Walsh

1. Discussion on Small Business Zoning with Mark Diller, Former Chair of CB7

The Zoning and Development and small Business Committees held a joint meeting to gather information of the small business zoning in place in Community Board 7. The former chair of Community Board 7, Mark Diller, presented the Upper West Side Neighborhood Retail Streets Proposal from June 2012.

City Councilmember at the time Gale Brewer (now Borough President) spearheaded this effort with the Department of City Planning. From the Department of City Planning description of the project:

The Upper West Side's traditional retail streets offer diverse retail services to one of the most dense and vibrant residential neighborhoods in the city. The Department of City Planning (DCP) was approached by the Upper West Side community and elected officials with a list of issues that the community believed threatened the local retail landscape. Studying the Upper West Side block by block, City Planning responded to the community's concerns with a proposal that would maintain over time the general multi-store character of Amsterdam and Columbus avenues, while promoting a varied and active retail environment on Broadway which is typified by larger and 2nd story retail establishments. The proposal only applies to new or expanding establishments, and in no case does the proposal regulate overall store size or type of retail, the ownership, or method of operation of any business.

The existing, threatened, character of the Upper West Side Commercial Avenues:

1. Primarily ground floor commercial uses with residential above
2. Multiple buildings and stores per block along Amsterdam and Columbus Avenues
3. Larger footprints and taller buildings along Broadway
4. Low vacancy rate throughout Upper West Side
5. Unique conditions affecting commercial dynamics:
 - a. Only three commercial corridors on UWS
 - b. Several Avenues with no commercial zoning
 - c. Less commercial square footage per person than other neighborhoods

The concerns cited by proponents included:

1. New stores are larger and out of character with existing context
2. Vacancies along certain blocks as landlords “warehouse” retail space for future combinations

3. Potential for banks with significant ground floor presence largely unjustified by business, but required for extensive signage
4. Lack of neighborhood quality in retail as most new retailers appear to have been national chains

The goals of the rezoning were to:

1. Preserve small store and active retail character where it exists,
2. Support neighborhood business needs,
3. Encourage diverse retail and service opportunities for residents,
4. Promote active streetscape and attractive environment for pedestrians,
5. Balance needs of shoppers, residents, visitors and businesses

The area rezoned in the special districts ran from 73rd Street to 110th street on Broadway, and from 72nd Street to 110th street on Amsterdam, and from 72nd street to 87th street on Columbus. Every storefront was mapped within these districts to confirm the character and identify the possible threats. In all, the pre Certification period took over a year, culminating in a ULURP approval in June of 2012. The rezoning included regulations for storefront widths and number of storefronts per block, as well as regulations for increased transparency in storefronts. Exceptions for schools, houses of worship and supermarkets were included, as well as a waiver process (not yet used).

Mark Diller admitted that it is hard to quantify the effects of zoning change. Some potential tenants have expressed a reluctance to move into an area with the restrictive zoning, although they also cite the need, on most of the West Side, to gain approval from the Landmarks Preservation Commission as another disincentive. Further, there may be a concern over dividing existing properties as they will not be able to be recombined in the future. Finally, he noted that zoning may not be the best vehicle for preserving neighborhood character, as it is a “blunt instrument” that favors uses over users.

While all of the comments from the public and Board Members were favorable, many were concerned that the structural differences between the East and West Sides are great enough that a similar program might not have a positive effect at all.

2. Proposal of Text Amendment on Zoning and Open Restaurants

DCP is putting forward a text amendment to facilitate making Open Restaurants program permanent. We began with a summary of the Administration’s interest in making the Open Restaurants program permanent with a focus on looking at the issue from a zoning perspective, without specific knowledge of whether restaurant owners agree that the program should be permanent.

On certain streets, such as 72, 79, 86, outdoor restaurants are restricted. Some Board members pointed out that some restaurants have frontage for outdoor space, and others don’t., while other restaurants take up much more of the block than their own frontage. Certain questions were raised such as, the needs of small business, and whether retail will begin to take up sidewalk space. Traffic is a concern. On Lexington, there is often one lane of moving traffic. The City must balance pedestrians, cars and trucks. Restaurants struggled, but would art gallery open restaurant and put it on sidewalk. This is a residential community that needs to balance different needs and uses.

A big concern is why make the Open Restaurants permanent. As the City returns to a version of normal and businesses reopen, the Open Restaurants program may not be necessary. Zoning is critical to keeping city out of chaos. There are Increased vermin and sanitation issues, visual blight because each restaurant has own style, and upheaval for neighborhood residents and other businesses but restaurants will not need the benefit when COVID-19 impact is over. We need an explanation from the administration. Why is sidewalk, a public space, given to a private entity. We should invite Administration and City agencies to explain why the City finds a permanent program necessary.

Matt Bauer from the Madison Avenue BID related that two restaurants close to his office are concerned that no one knows when the public will be interested in dining indoors. The outdoor restaurants give the streets a sense of aliveness. There have been changes in the retail landscape. Madison Avenue is starting a loyalty program. The Open Restaurant program has made an enormous difference, keeping restaurants open, while local residents kept them going.

A member of the public raised giving businesses the leeway of the same amount of time they have been impacted directly to recover, which would be about 12- 15 months to allow them to recover losses. Then move back to streets for cars and normality.

Another member of the public was glad we were able to assist the restaurants but there will be difficulties is program is permanent. Getting onto buses, especially on York, was difficult because insufficient amount of lanes and buses couldn't get to the curb easily when restaurants are in the street. Delivery trucks double-park making it difficult to go down York Avenue quickly. Many restaurants had a couple of tables on the sidewalks, still allowing pedestrians to go by. But, in long run, the increase in sidewalk tables won't work for everyone.

There is a need to get input from residents and neighbors. It has been difficult to walk on many of the avenues, raising the question of mobility for seniors with walkers. It should be re-evaluated regularly, starting after a year.

City agencies should be using the next months to assess what is being used. They should allow licenses for a short period of time and evaluate how the program is impacting the community. There are restaurants that are using outdoor space to seat far more customers than their indoor space allows. Does the permanence become attached to the property or the restaurant? Public spaces shouldn't be given away for free forever. Some restaurants have put in expensive spaces, while others are more rustic. There should be a mechanism for the restaurants that spent a lot to get a tax credit if they have to remove the outdoor areas. The City should be considering how this will come together. Parking revenues have been lost which is not offset by restaurant income from use of the parking spaces. Many constituents need to be considered.

If the program becomes permanent, how will building codes be resolved. There are potential fire hazards for the outdoor buildings. Who will be responsible if there are fires outside? because Insurance may not cover fires on the street. We must analyze the quality of the streetscape, which is unique on the Upper East Side. Residents pay a lot of taxes. We must be sure that decisions are not quick and fast. There are issues with electricity and gas service. Building code safety must be looked at with the outdoor structures.

The question of whether there is a distinction between sidewalks and streets with respect to zoning was raised. Why was zoning implemented on side streets? The Mansion has enhanced the community experience, adding vitality. Was pedestrian activity a factor in the zoning that prohibited restaurants on 86 Street. A Board member, stating that the City must evolve, and supportive of permanence for the open restaurant program reminded everyone that what will be normal moving forward may not be the same as the way it had been. The makeshift current program is not ideal. We need better oversight and clear guidelines, particularly with pedestrian access. Should the program be restricted in certain corridors or on certain avenues on quality of life issues. A figure was cited that about 25 % of residents have cars, although that figure was rejected by other Board members. We can't assume that necessary parking and sidewalk space to accommodate pedestrians can't be part of a permanent program.

The Mayor's initiative is designed to remove the little regulatory oversight. His plan is to make it easier to have permanence.

There is considerable consensus that removing regulations is not a good thing. The temporary structures would become permanent without regulation by DOB or DOT. Others understand that the permanent program will be developed but that lifting current underlying zoning should not be at the expense of a program with possibly different structures, the haphazard manner in which the temporary program was developed.

A response to the data cited from the census was made. Car rentals are part of the picture. The reference to the percentage of cars was questioned, with a statement that the percentage was higher than 25.

There were continued calls for enforcement, and a need for a dedicated enforcement unit. There needs to be time to look at regulations that should be put in place to make the open restaurant program work for everyone.

Are restaurants expanding physical outdoor space as a land grab to ensure maximum outdoor space when it becomes permanent. There was a specific reference to a bench in a tree bed to illustrate how restaurants are spreading much further than they should on public property. This should not be a land grab.

A lively discussion ensued on whether it will be permanent with additional, strong and equitable regulations, including applications, or whether it will become permanent as is.

There were additional comments that first the program went until October 2020, then until 12 months after pandemic, then permanent, with a great growth in the amount of outdoor space acquired by individual restaurants. When outdoor dining was allowed even though the space was more “indoor” than “outdoor,” some of the indoor dining restaurants were not positioned to be able to use outdoor space. Those who had outdoor space also benefitted more from PPP which were based on average monthly expenses. The average for indoor restaurants closed in November was much smaller than the average for the restaurants that were able to have outdoor space. DOT has not inspected even when specifically requested. Some have been inspected and allowed to remain open even with less sidewalk space than permitted. The use of outdoor space should be equitable. Those who have more outdoor than indoor space are doing well financially. The restaurants that couldn’t use outdoor space are suffering. They should get help from those that have done well financially. The program must be equitable to the restaurants and to the public and to the shops that can’t build on the sidewalks.

Board members concurred that regulatory oversight and an equitable program are essential. Regulations must ensure that codes are complied with. More residents are returning, offices are opening. Pedestrians should not be penalized for using the sidewalks. All needs must be balanced while trying to help restaurants, and providing for those who were open can contribute to those who could not open outdoors. Zoning text amendments are a slippery slope. Without enforcement, dangerous precedents could be set.

A zoning text amendment is too drastic and rushed. We should look at bike lanes, bus lanes on the avenues and evaluate how we use public space before restaurants are given permanent space.

We are still in a pandemic. This is not the right time to make the type and extent of change proposed. Making anything permanent should not be done at this time.

Each type of zoning in a community is intended to meet different needs. Zoning changes should be different for each community. Each zoning change should be grass roots. We need to look at competing interests. There’s a conflict with bike lanes where certain riders go so fast that DOT has proposed putting speed bumps in the bike lanes in certain areas. The disabled, elderly, children, families were impacted. Small businesses were impacted. The answer is looking at how to put together the needs of everyone creatively. What has happened with the rent. We should examine commercial rent control. We can’t save one part of the community at the expense of the rest.

Other industries must be helped.

The City Council passed legislation for permanence of the Open Restaurant program.

There were additional comments objecting to any zoning text amendment that would facilitate permanence of the Open Restaurants program on other bases. There should have been incremental extensions of the Open Restaurant program. There are no statistics supporting public interest in permanence. The Zoning Resolution is the best protection for communities.

A resolution was proposed.

WHEREAS the Mayor’s office has stated that the Open Restaurants program will be permanent;

WHEREAS the City Council has enacted legislation to make the Open Restaurants program permanent;

WHEREAS The Department of City Planning is preparing a text amendment to the Zoning Resolution to alter all zoning rules and regulations that would impede the establishment of the Open Restaurants Program as permanent;

WHEREAS Community Board 8 supports restaurants and other small businesses;

WHEREAS restaurants are vital to the success of the City

WHEREAS the elimination of indoor dining during the pandemic created a financial difficulty for restaurants, justifying the need for a temporary Open Restaurant program as an outdoor alternative to indoor dining;

WHEREAS once indoor dining is fully available to the public, the need for an Open Restaurant program may no longer exist, and if there is a continuing need, it is unknown for how long and to what extent such a need will exist;

WHEREAS the Open Restaurants program has led to unforeseen and unintended consequences;

1. the use of outdoor heaters permitted by the Open Restaurants program may create a safety hazard;
2. fires or other damage caused by the use of outdoor propane or other heaters may not be covered by participating restaurants' insurance coverage;
3. there is an increase in vermin and other sanitation issues;
4. non-compliance by restaurants with required open sidewalk space for pedestrians has created a hazardous situation;
5. Some participating restaurants have commandeered sidewalk space for their own use, including the placement of a bench in a tree bed;
6. The City is losing revenue from the loss of parking spaces;
7. There must be evaluation of whether Open Restaurants street and sidewalk usage is compatible with the needs of parking availability and pedestrians;
8. sidewalks and streets are for public use;
9. the inability of buses on York Avenue to reach the curb because restaurants have expanded to using lanes in the street has made it more difficult for bus riders to board buses;
10. the Open Restaurants program has contributed to traffic congestion;
11. prior to the pandemic, restaurants paid the City fees to use outdoor space for seating and the Open Restaurant program has eliminated such fees creating a financial consequence for the City's budget;

WHEREAS Community Board 8 is concerned about equity for all restaurants and small businesses:

1. not all restaurants were able to participate in the Open Restaurant program because of impediments in their physical location, such as proximity to a bus stop, fire hydrant, Citibike station or other obstacles;
2. those restaurants that were able to use outdoor space and maintain employment were eligible for greater PPP amounts than those restaurants that were unable to use, or had more limited use of, outdoor space, contributing to a lack of fairness;
3. there are questions about fairness, including whether those restaurants able to participate in the Open Restaurants program should provide assistance to those restaurants unable to participate in the program;
4. other businesses, such as shops, have not had the benefit of City programs to stabilize and improve their economic situation impacted by the pandemic;

WHEREAS zoning changes of this magnitude should originate at a community level;

WHEREAS predicting the future is impossible, making a permanent program based on an exigent, pandemic need unsupportable;

WHEREAS analysis and evaluation essential to adapting the Open Restaurants program must occur after the pandemic recedes;

WHEREAS the Zoning Resolution creates stability, predictability and considers factors and consequences other than benefits to one particular industry;

WHEREAS there is no provision to extend the Open Restaurant program for a limited period of time with a review prior to extending the term;

WHEREAS there is no provision for evaluation of the program before analyzing how long it should be in place;

WHEREAS there has been a lack of adequate enforcement by the DOB, DOT, DOH , DSNY and other agencies as appropriate of restaurants participating in the Open Restaurants;

WHEREAS the restaurants need clear guidelines with respect to pedestrian access to and use of the streets;

WHEREAS quality-of-life issues that apply to certain avenues and streets need to be addressed;

WHEREAS there is a need for public input into the Open Restaurants program;

WHEREAS a permanent Open Restaurants program ought to be more stringently regulated than a temporary program

THEREFORE, BE IT RESOLVED that CB8 does not support any zoning changes in relation to outdoor dining whether on streets that permit outdoor dining or not.

VOTE: 10 in favor: Alida Camp, Valerie Mason, Elizabeth Ashby, Anthony Cohn, Gayle Baron, Michele Birnbaum, Billy Freeland, Cos Spagnoletti, Marco Tamayo, Elaine Walsh

1 against: Craig Lader

0 abstentions

0 not voting for cause

3. Presentation from Jessica Walker of the Manhattan Chamber of Commerce on Support for Federal Funding Application

Jessica Walters from the Manhattan Chamber of Commerce asked the Committee to write a letter of support of their \$ 800,000 grant request for a project that seeks to reduce storefront vacancies through the use of data, pop-ups, temporarily installations, and support for existing small businesses.

*Alida Camp and Valerie Mason, Co-Chairs Small Business Committee
Elizabeth Ashby and Anthony Cohn, Co-Chairs Zoning & Development Committee*