Brooklyn Borough President Recommendation
CITY PLANNING COMMISSION
22 Reade Street, New York, NY 10007
CalendarOffice@planning.nyc.gov

INSTRUCTIONS
1. Return this completed form with any attachments to the Calendar Information Office, City Planning Commission, Room 2E at the above address.
2. Send one copy with any attachments to the applicant's representatives as indicated on the Notice of Certification.

APPLICATION #: 150109 ZRK – 1901 Emmons Avenue,
Cherry Hill Gourmet Food Market

In the matter of an application for Zoning Text Amendments to the Special Sheepshead Bay District Section 94-061, submitted by Cherry Hill Gourmet Food Market, to permit a Use Group 6 food store in Area B of the special district with no limitation on floor area or street frontage per establishment.

COMMUNITY DISTRICT NO.15
BOROUGH OF BROOKLYN

RECOMMENDATION

☐ APPROVE
☐ APPROVE WITH
MODIFICATIONS/CONDITIONS

☐ DISAPPROVE
☐ DISAPPROVE WITH
MODIFICATIONS/CONDITIONS

SEE ATTACHED

BOROUGH PRESIDENT
February 4, 2015
DATE
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.