

Final Report

Preserving Retail Diversity in Community Board 3

Prepared for Community Board 3 by Mary DeStefano, Urban Fellow 2011-2012

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June 26, 2012

INTRODUCTION:

Community Board 3 has identified a problem within many of its neighborhoods. There has been a rapid proliferation of chain stores and restaurants, and high-end nightlife establishments, and as such, rents are artificially increasing and local mom-and-pop shops, bodegas, dry cleaners, hardware stores, etc. are being pushed out. As local businesses close and nightlife takes over, the character of the neighborhood is changing and many storefronts are closed-up during the day and only open at night. However, one sector of retail is still growing, and that is high-end boutiques. Thus, this is not just a problem of restaurant-versus-retail, but also of diversity of price-of-products.

As the Lower East Side and East Village are becoming nightlife destination areas, and the Bloomberg administration advertises the LES as a tourist destination, the needs of the local, and particularly the poorer, residents are being pushed aside. Some action must be taken in this matter in order to preserve quality of life for the current residents.

One may wonder if this is even possible in the face of gentrification, but one option to consider as a way to address this problem is to create a Special Purpose Zoning District. This report will give details regarding this proposed special district, it will provide references to best practices in other cities, and it will outline the necessary steps that will need to be taken if the Community Board would like to proceed in this direction.

A thumb drive has been delivered to Susan Stetzer, District Manager, which has many relevant reports, articles, and documents on it.

RECOMMENDATIONS:

The following recommendations are meant to level the playing field. Their purpose is not to regulate chains or high-end restaurants as much as to provide small businesses and mom-and-pops a fighting chance to compete. Chain restaurants have their place and provide cheap food to poorer residents; however, there is no need for a Dunkin Donuts on every corner, and in 2008 the Center for an Urban Future reported that the East Village had the 3rd most chain restaurants in NYC.¹

The research performed has resulted in these recommendations:

RECOMMENDATION 1:

Formation of a Special Purpose Zoning District that has three main components:

- 1) **Formula Business Restrictions.** These restrictions would require any business that meets the criteria of a formula business (typically 11 businesses or more) to apply for a special permit in order to open.

¹ Attack of the Chains?, Center for an Urban Future. July 2008
http://nycfuture.org/content/articles/article_view.cfm?article_id=1215

- 2) **Store-Size Limits.** Any store that is larger than a certain size (square footage) or took up more than a certain percentage of a block-face would require a special permit.
- 3) **Limitation on Hours of Operation.** In order to have a way to regulate retail establishments and eating and drinking establishments separately, a special permit for being open late at night would be required.

RECOMMENDATION 2:

Assess the services that are already available to small business owners. Look for ways to improve these services through improved education and outreach.

- Tax Credits and incentives. Help with managing property taxes.
- Assistance with Energy retrofitting and utilities.
- Legal services, lease counseling, education, and workshops.
- Buy-local Campaigns.

DEFINITIONS, AND DISCUSSION OF RECOMMENDATION 1:

SPECIAL PURPOSE ZONING DISTRICTS:

A Special Purpose Zoning District is an overlay on top of a previously zoned area. “The regulations for special purpose districts are designed to supplement and modify the underlying zoning in order to respond to distinctive neighborhoods with particular issues and goals. Special purpose districts are shown as overlays on the zoning maps.” (Zoning Handbook, *The Department of City Planning*, 2011)

Historically special purpose districts have been used to control design, use, bulk, and to encourage things like arts and theater districts. The proposed district for CB3 will address formula, size, and hours -- this has no precedent in New York City.

There are 57 Special Purpose Districts in NYC; 20 are in Manhattan. The first was created in 1969.

They all begin with the same general Purpose Statement:

The X district established in this Resolution is designed to promote and protect public health, safety, and general welfare. These general goals include, among others, the following specific purposes:

Examples and excerpts of related special districts can be found in the document labeled “Report on Special Purpose Districts” located on the thumb drive.

FORMULA BUSINESS RESTRICTIONS:

A Formula Business is what is commonly known as a “chain”, and it is defined by its standardized logo, merchandise, trademark, etc. (see report entitled, “formularetail.pdf” for more information and for a list of cities with formula business restrictions).

Formula Business Restrictions seek to limit the number of chains in a given area. The number of locations required before something is deemed a chain is up for debate. San Francisco, the only large city with formula restrictions, states that a business is a chain if it has 11-or-more locations nationally.² New York City defines a chain restaurant as having 20 or more locations, at which point they are required to list their calorie counts.

San Francisco is the largest city to have instituted formula zoning. It operates on a neighborhood-by-neighborhood level, but requires all formula businesses to apply for a special permit. (See document entitled, “San Francisco Formula Zoning Definition” for more details or regulations). When reviewing the request for a special permit, the committee may consider things such as:

- Retail-Mix of the neighborhood.
- How many chain stores are already located in the neighborhood.
- Vacancy rate.
- Neighborhood character.

(In New York City, all special permits are reviewed by the Board of Standards and Appeals).

In the United States, 7 cities have restrictions for formula restaurants and 12 cities have restrictions for formula retail chains. (PrattCenter-Preserving_Local_Retail.pdf)

STORE SIZE LIMITS

The purpose of this component of the Special Purpose Zoning District is to place some regulation on the proliferation of chain banks and pharmacies. The types of formula business restrictions discussed earlier were focused on restaurants and retail.

A store-size limit would establish a maximum square footage for stores; stores that wish to be larger would require a special permit. Another element might be that a store may only take up a certain percentage of a block face, and if it wished to be larger than that, it would have to have an upstairs or downstairs.

See “UWS Proposal Presentation” to read about what Community Board 7 is proposing in order to deal with the proliferation of chain banks and pharmacies on the UWS.

LIMITATION ON HOURS OF OPERATION

² San Francisco Planning Department: Chain Stores (Formula Retail Use). <http://www.sf-planning.org/index.aspx?page=2839>

A limitation on hours of operation would require that any establishment open after a certain hour must apply for a special permit. Once again, this is not meant as a restriction, as much as it is a way to level the playing field. The zoning code has different Use Groups that designate what uses may occur in a given area. Use Group 6 “includes all retail and service establishments that serve local shopping needs, such as food and small clothing stores, beauty parlors and dry cleaners.” (Zoning Handbook, 2011) As such Use Group 6 makes no distinction between a restaurant and a store. A limitation on hours of operation would thus provide the community with a more nuanced way to determine which type of establishment would be allowed in a given location.

DISCUSSION OF RECOMMENDATION 2:

INCREASE AWARENESS OF CURRENT SERVICES BEING PROVIDED

New York City has a number of programs already in place to help small businesses. Small Business Services provides seminars and help in various forms. There are tax incentives and credits in place as well. The flaw seems to be a lack of awareness and outreach. Further brainstorming is required to try to find better ways of getting this information to the small business owners who need it.

See the folder “Defensive Strategies Supporting Material”, and the document, “Annotated Directory of Defensive Strategies” for further information.

BUY LOCAL CAMPAIGNS

There are lots of models of ‘buy-local’ campaigns, and some have been used in CB3 already. Austin, Texas has been very effective in promoting their local businesses through a campaign called “Keep Austin Weird”. Austin should be looked to as a model.

Bloomberg BusinessWeek reports: “Austin has long had a pro-independent business vibe, and a 2002 analysis showed that \$100 of local spending returned \$45 to the city's economy, compared to just \$13 returned for the same spending at a chain store. Austin's business alliance now works with developers to bring local merchants into new retail space. Its annual Austin Unchained event became the model for a national day to support local spending.”³

FURTHER RESEARCH TO BE COMPLETED:

- Up-to-date understanding of what is going on in New York City on this topic. Community Board 7 has already begun the process of applying for a special district; it will be important to follow their progress. Community Board 1 has expressed interest also. Collaborating with other Community Boards will make it more evident to Department of City Planning (DCP) that this is a consistent concern throughout the city.

³ http://www.businessweek.com/smallbiz/content/feb2009/sb20090226_752622.htm

- Further research and summary of why we, as a society, should care about local shops. For example, there is data proving that local stores give much more of their revenue back into the community than chain stores. Also, in areas with a large population of people coming out of prison, local businesses have proven particularly important. Mom-and-pops are often the only places that will hire these people as they know the community and might know someone who is willing to vouch for this person; in contrast, chains are generally more impersonal and would not hire someone with a criminal record.

Concerns that have already been brought up by Board Members that require further exploration:
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- What are the real rules about “grandfathering” of businesses?
- How do we reconcile an individual landlord’s needs (i.e. to turn a profit) to the needs of the community as a whole?
- How much control would the Community Board really have over who gets a special permit? If the permit goes to the Board of Standards and Appeal will the Community Board’s input be considered?

NEXT STEPS:

Task 1: Create Consensus among Community Board Members for Next Steps

Purpose:

There have been many concerns voiced at the Economic Development Committee Meeting. In order to implement the recommendations, consensus must be created among Board Members.

Process:

1. Each Community Board member should write a list of their concerns.
2. A meeting should be scheduled to discuss these concerns.
3. Modifications should be made to scope based on concerns.

Product:

Schedule a meeting to discuss these concerns.

Task 2: Needs and Specifications

Purpose:

Create design scenarios and determine specific elements of the district.

Process:

First, come up with alternatives:

1. What area would include the Special Purpose District? It should not be the entire Community Board.
 - *Would it be different on side streets than on Avenues? There can be sub-districts within the district.*
2. What is the formula of the formula business restrictions?
 - *Is it just a restriction of formula restaurants or formula retail also?*
 - *What is the definition of a formula business? San Francisco defines it as 11 or more locations nationally. Mayor Bloomberg's Department of Health defines it as 20 or more (at that number a restaurant is required to list calorie count).*
3. What are the size limits?
 - *What square footage?*
 - *Or what percentage of a block? For example, allow a larger square footage if there is an upstairs or downstairs.*
4. What are the hours to be regulated?
 - *Open after 10pm, 12am, 2am, etc.?*
 - *Would it only be for businesses in proximity to other businesses? Or if it is a business in proximity to residential buildings?*

Second, the Community Board must create criteria to select among these options.

Product:

- A memo with agreed upon possible alternatives and selection criteria.
- A final proposal that the Community Board can present to the Department of City Planning, which has good graphics and high quality photos if needed.

Task 3: Dissemination to Appropriate supporters

Purpose:

To ensure that there is political support for this proposal.

Process:

District Manager will invite Councilmember, and any other supporters, to have a meeting with Chairs of the Economic Development Committee (or Subcommittee) and any other interested parties to discuss this plan.

Product:

Hopefully the Councilmember will be interested in helping to move this allow as quickly as possible. The steps of ULURP outlined below can take a long time, so having interested parties to call and try to persuade the Borough President or City Planning Commission can be useful.

Task 4: Review Uniform Land Use Review Process (ULURP)

Purpose:

To create a Special Purpose Zoning District.

Process:

1. The first step of a ULURP is to take the proposal to Department of City Planning. They will certify that the application is complete and send it back to the Community Board and to the Borough President. There is no time limit on how long this can take.
2. Once the application is approved the Community Board must notify the public and hold a public hearing. This should take about 60 days. Then the Community Board will submit the application to the City Planning Commission.
3. The Borough President will also review this application. If approved, the Borough President will send it on the City Planning Commission as well.
4. The City Planning Commission will hold a public hearing and if approved will send the application on to City Council.
5. Once City Council approves it, it will be sent along to the Mayor. The Mayor has absolute veto power and may overthrow the Council's decision.

This entire process can be time consuming. It can take anywhere from 6 months to multiple years.

Product:

Ideally, the product after all this will be the creation of a Special Purpose Zoning District.

Thank you for your consideration of this report.

Sincerely,
Mary DeStefano