

COMMUNITY BOARD TEN
ZONING AND LAND USE COMMITTEE

March 12, 2009

Present: Joanne Seminara, Michael Festa, Ron Gross, Steve Harrison, Scott Klein, Dino Lamia, Susan Pulaski, Fran Vella-Marrone, Maryann Walsh,

DM Josephine Beckmann, Stephanie Giovinco, Council Member Gentile, Susan Tirota – Assembly Member Janele Hyer-Spencer, Bob Hudock,

**#1 Unenclosed sidewalk café application Little Cupcake, 9102 Third Avenue.
Consumer Affairs License No. 1220615**

This is an application to renew and amend an unenclosed sidewalk café license originally granted in 2006 which had consisted of 15 tables and 30 seats. The renewal seeks to amend the configuration of tables and chairs to accommodate a smaller café consisting of 8 tables and 16 chairs for this desert café and pastry shop located on the corner of 3rd Avenue and 91st Street. The café is being downsized because less space is now available on the side street.

The Board has received no complaints regarding this establishment. The Committee voted unanimously to approve this application.

2. BSA Application for 123 87th Street

The owner of premises 123 87th Street Brooklyn, NY is appealing a revocation of their building permit to develop the lot and build up to the lot line of the adjacent one family home as an extension to applicants existing home. This appeal is being actively opposed by Mr. & Mrs. Gershon who own the adjacent house and who appeared before the ZALUC Committee in February 2009 to ask support for their position. To give the applicant Mr. Cunningham an opportunity to present his case to the ZALUC Committee Mr. Cunningham accepted our invitation to make a presentation but did not attend the ZALUC meeting.

At the request of Mr./Mrs. Gershon Community Board Ten took action on this matter on 2 separate occasions by writing to the DOB in 2007 to ask that it clarify ZRCNY 23-49 with regard to the minimum side yard requirements. In June of 2008, we asked the NYC Department of Investigation to investigate why the development was originally approved based on architect's self certification, prior to its disapproval by the Department of

Buildings which disapproved or revoked the permit that was granted. Earlier the Supreme Court, Kings County issued a preliminary injunction stopping all work.

ZALUC passed by a motion by a vote of 7 out of 8 members with one abstention to request that the BSA deny the appeal and support the DOB's position that Section 23-49 requires a side yard between the premises 123 – 87th Street and premises 127 87th Street and does not permit a lot line wall to be constructed adjacent to the 127 87th Street lot.

3. New Primary Public Schools in CB 10 to be located at 4th Avenue and Ovington Avenue and 62nd Street and Fort Hamilton Parkway.

In its approval of 2 new primary schools for our district Community Board Ten expressly requested that it be allowed input with regard to the layout and design of each school. We were most fortunate that Susan Pulaski and Ron Gross were able to attend a presentation by the SCA regarding preliminary plans and ideas for each school. Susan and Ron reported regarding the status of plans to construct both schools.

With regard to P.S. 310 K at Fort Hamilton & 62nd Street, SCA plans to site one entrance on 62nd Street as we suggested and presented an preliminary layout of the building, planned to house 327 students.

With regard to the “Green Church” site and architect was chosen and performed preliminary research regarding the history of the site and adjacent area and is very enthusiastic about incorporating design elements and features so as to preserve the feel and spirit of the former building and its environs. Ron and Susan reported that they were very pleased about the opinions of the architect to preserve the site's history which includes possible inclusion of green stone in the interior and old photos, which depict the history of the area and a footprint which angles the church. From the meeting it appears that efforts are being made to respect the suggestions of Community Board Ten.

Ron Gross and Susan Pulaski have graciously agreed to attend future meetings to discuss the status and contribute our input regarding both sites.

4. Department of Buildings Proposed Development Challenge Process.”

On February 2, 2009, the DOB announced a pending change to the existing procedure affecting building plan approvals and objections to DOB permits. This proposal first came to the attention of CB 10 in late February, 2009. Proposed rules 105-03 and 105.04 contain new requirements affecting developed and public challenges. The rules require DOB to make zoning diagrams for every “as of right” project issued a permit by the DOB to be posted on the DOB website and provides a 30 day period from date of permit issuance during which the public can challenge the issuance of a permit. The new rules provide a time line a public challenge process a follows:

Initial Public Challenge Period: Once a job is approved, the public will have 30 calendar

days to review and challenge the Department's approval of the job. To challenge an approval, individuals must submit the Zoning Challenge and Appeal form or Construction

Challenge and Appeal form.

• **Initial Zoning Challenge Review:** After the initial public challenge period ends, the DOB

Borough Commissioner will address every challenge by conducting a full review of the construction plans and rendering decisions that will be posted online. If a challenge is determined to be valid, appropriate enforcement action will be taken, including issuing Stop

Work Orders, revoking of permits, and requiring redesigns of the proposed construction.

• **Community Appeals Period:** If the challenge is denied, the public will be given an additional

15 calendar days to appeal to the First Deputy Commissioner. To do so, individuals must submit the Zoning Challenge and Appeal form or Construction Challenge and Appeal form.

• **Final Zoning Challenge Review:** Once the First Deputy Commissioner issues a determination, the decision may be appealed to the Board of Standards and Appeals for a final determination.

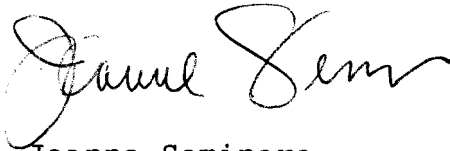
In response to the proposed rules on March 5, 2009, Chair Dean Rasinya and DM Josephine Beckmann wrote a letter to DOB Commissioner LiMandri asking questions and seeking clarification with regard to the pending rules and objections to them to the extent they restrict Community Board and/or public review to a 30 day period.

ZALUC discussed the proposed rules and notwithstanding that it applauds the measure to the extent it requires plans to be posted on the DOB website for public hearing, it recommends that Community Board Ten write a letter objecting to same for the following reasons:

1. The rules can be interpreted to restrict the filing of objections to an arbitrary 30 day period from the issuance of a permit and thus make it impractical if not impossible for Community Board Ten to review a project and possibly issue objections.
2. The rules appear to take away/diminish public rights to object;
3. Place more authority with respect to final determination with the BSA and call into question how such final determination affects the current rights to appeal a final determination of the DOB to the BSA.
4. Inappropriately and inefficiently calls for a public review process after DOB issues a permit instead of before permits are issued which may interfere with legally unobjectionable projects after they have commenced; and

5. Procedurally usurp rights and procedures granted by the NYCZR and under other applicable laws.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Joanne Seminara". The signature is written in a cursive, flowing style with a large initial "J".

Joanne Seminara
Chair, Zoning and Land Use Committee