



Community Board 7

Borough of Queens

Bay Terrace, College Point, Beechhurst, Flushing
Malba, Queensborough Hill, Whitestone and Willets Point

133-32 41st ROAD · 3rd FLOOR · FLUSHING, NY 11355
(718) 359-2800

Fax: (718) 463-3891

Email: qn07@cb.nyc.gov
<https://www1.nyc.gov/queenscb7>

Donovan Richards, Jr.
Queens Borough President

Eugene T. Kelty Jr.
Chairperson
Marilyn McAndrews
District Manager

COMMUNITY BOARD #7 PUBLIC HEARING & REGULAR MEETING
MONDAY, SEPTEMBER 13, 2021
AUDIO AND VIDEO TELECONFERENCE

PRESENT

Charles Apelian
Kaily Cheng
Michael Cheng
Kim Cody
Nicholas Corrado
Arlene Fleishman
Richard Forman
Fred Fu
Doreen Gatanas
Cody Herrmann
Lawrence Hughes
Eugene Kelty
Phil Konigsberg
Esther Lee

Wendy Louie
Frank Macchio
Betsy Mak
Rev. R. McEachern
Barbara McHugh
Michelle Miao
Selma Moses
Sergio Nicolich
Kim Ohanian
Millicent O'Meally
John Park
Terence Park
Yacov Pshtitsky
Frank Quatela

Kris Ram
Paul Rifino
Warren Schreiber
Kevin Shields
Matthew Silverstein
Joshua Sussman
John Tsavalos
Harpreet Wahan
Clarissa Wong
Maggie Wong
Dian Yu
Linna Yu
Jie Zhu

ABSENT

James Cervino
Vincent Gianelli
*Pablo Hernandez
Jeff Huang

Dr. Wensong Li
*Joseph Sweeney
Peter Tu

*Lei Zhao

COMMUNITY BOARD #7 STAFF

Marilyn McAndrews, District Manager
Mary O'Neill, Community Associate
Anne Krzyzanowski, Community Aide

GUESTS

Susan Lui-Congresswoman Meng's office
Mabel Tso-Congresswoman Ocasio-Cortez's office
Soojin Choi-Lee - State Senator Liu's office
Xin Ying Wu -Assemblywoman Rozic's office
Amber Yoon -Assemblyman Braunstein's office
Vito Tautonico-Councilman Vallone's office
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Joonyong Ahn-Councilman Koo's office
Elizabeth Bian-Queens District Attorney Katz's office
Max Weprin-Queens Borough President's office
Vanessa Ordonez-Queens City Planning office
Hye-Kyung Yang-Queens City Planning office
Teal Delys-Queens City Planning office
Al Silvestri-Dept. of Transportaton's office

*Excused

Chair Kelty opened the Public Hearing meeting at 7 pm with the Pledge of Allegiance to Our Flag followed by the attendance taken by with **(41) Present (5) Absent (3) Excused.***

Chuck Apelian asked the Chair for time to speak. “Saturday was the 20th anniversary of 9/11, and I wanted to acknowledge five of our prominent Board members, on active and inactive duty from the Police and Fire Dept: **Kim Cody** – At the time of the attack Kim was retired from the Police Dept., but the services he gave was immeasurable to us and the City of New York. Hats off to you Kim!

Paul Rifino - Already retired four years from the Fire Dept. He called in and asked how he could help and spent weeks supplying help, water and staging daily from Shea Stadium (now known as City Field). Our heartfelt thanks Paul!

Serge Nicholich - Was recently retired from Nassau County Police Dept and was on duty on 9/11 and spent much time at Ground Zero and the following weeks at the Marine Bureau and other emergency affiliates. Serge, our grateful thanks! **Nick Corrado** – Nick is currently Division Chief of the Manhattan Fire Dept. Please understand there are only a few ranks higher than his in FDNY. At the time of the attack, he had just left his tour and was on route home. He immediately returned and spent many days at Ground Zero. His HazMat Unit # 1 lost 19 men that day. We were fortunate he was not one of them. Chief, our many thanks to you for your service!”

“I didn’t know these four men back in 2001. But I did know the fifth gentleman these past 20 years while working on Community Board #7, and he is our Chief and Chairman, **Gene Kelty**. As many of you know he recently retired as Battalion Chief of the FDNY 10th Battalion located on East 85th Street in Manhattan. He also has a very respected rank, just a notch below **Nick Corrado**. Gene and I held attended our CB7 Public Hearing the night before 9/11 and ended the evening having dinner and drinks and talking politics. The next day, Gene was off from work and was on the golf course with his brother Jim, also with the FDNY, when they heard the news. Both of them rushed into the City and spent several weeks at Ground Zero. Twenty years ago, technology was not advanced as today. Smart phones, Wi-Fi’s and Blue Tooth did not exist. Flip-type Cell phones were our only method of communication and we couldn’t get through to Gene for days. Finally, our DM Marilyn Bitterman got through and found that Gene was safe. No. 10 House lost six men that day and Gene was spared but not completely. As you all know, he contracted pancreatic cancer six years ago due to his work at Ground Zero. Fortunately, he is now cancer free the past six years. I’d like everyone to give a round of applause to all five. Thank you!”

Nick Corrado thanked Chuck and can never forget the heroism he witnessed by men and women on that day, and a reminder to teach your children what occurred, and the bravery displayed. Remember always to honor our Flag. **Serge Nicholich** thanked Chuck for acknowledging us.

Approval of the Minutes of June 14, 2021 and June 28, 2021 - Both were unanimously approved and seconded by Warren Schreiber and Josh Sussman.

The Chair commenced his announcements of the events taking place in our area. You can call our office to confirm the dates. Susan LaCerte is retiring from The Queens Botanical Garden and moving to Maine with her family and will be missed. The Budget for 2023 must be ready to submit by October 2021 after the needs received from our City agencies, Civic associations, etc. are put together for final submission.

DOT ZONING TEXT AMENDMENT - Prepared by Hye Kyung Yang of City Planning and Al Silvestri of DOT. This is a ULURP item, and **Committee Chair Apelian** gave the floor to **Mr. Silvestri**. Because of COVID-19, Mr. Silvestri said the emergency program was essential to keep restaurants afloat, which now

led to the permanence of outdoor dining by giving restaurants sidewalk and street spacing legally with rules of enforcement. During COVID-19 over 11,000 restaurants and 100,000 jobs were saved with no license or participation fee and learning as we went forward. A permanent program will require a license and fee and a complete review of the process to be enforced by the DOT including legally allowing more locations, new rules incorporating DCWP criteria, proper sidewalk scaffolding, removable tables, chairs, barriers, seating against building walls, ADA requirements, hours of operation already consistent citywide, etc. Both the Mayor and City Council changed some laws to cover this changeover.

Comment by Dian Yu – Flushing Downtown sidewalks are too narrow for dining. Also, stores and residential garbage is placed in front of doors or curbs. Illegal outdoor selling already exists so there is no space for sidewalk dining or their trash, which would make it worse. The danger of fires already exists.

A. Al Silvestri – Downtown Flushing will not be able to have outdoor dining.

Q. Chuck Apelian – Why is the DOT involved in the building of these additions. Shouldn't the DOB be involved in the construction integrity of a building structure addition? The DOT is always involved in the enforcement process.

Comment from Gene Kelty- The DOT and City Planning are responsible for roadways and sidewalks. Leave it at that.

A. Al Silvestri – Guidelines will be reviewed over this year, and the results will be strictly adhered to and enforced. The additions must be removable. The setups need good visibility from cars, bikes, trucks, etc. The base of the structures must be sturdy and protective, but not above your head. Many probably will not meet the requirements. Better yet, when COVID-19 runs its course, the need will end.

Q. Kris Ram – How long is this DOT permit for? And what about the Liquor license?

A. Al Silvestri - The permit will be for 4 years. The fee structure is still to be determined. Also, if the restaurant already has a liquor license; it can be served outside.

Q. Warren Schreiber – I understand hours of operation weeknights are until 12 pm and Friday and Saturdays until 1 pm. What about the morning? Also, regarding ADA compliance, temporary ramps need to be at the right elevation. Who will enforce this?

A. Al Silvestri – Monday through Saturday 8 am and Sunday 10 am. The new rules will incorporate the DCWP criteria also, including ADA compliance.

Comment by Kim Cody – I understand DOT plans starting a new unit, but it can't be small. It has to be large.

A. Al Silvestri - I agree. It should be large.

Q. Cody Hermann – What about enforcement of all the rules if they do not adhere to them?

A. Al Silvestri – They will be fined and removed from the program.

Q. Barbara McHugh - What is the City doing for the City's loss of parking revenue in front of all these outdoor restaurants?

A. Al Silvestri – It will probably be included in their rental fees for any loss of street area parking.

Q. Arlene Fleishman – Other than a permit fee, is there any other fee, i.e., a rental fee, a sidewalk or a structure fee involved?

A. Al Silvestri – Just the permit fee. No other cost, only filling out the application. Businesses in front of a Bus Stop, a fire hydrant, etc. cannot apply.

Q. Serge Nicholich - Has any consideration been given to the residents (the property tax people) living in the commercial area having to find parking blocks away from their homes, while those coming into the area to dine are using their parking spots.

A. Al Silvestri - It's a trade off by living in a commercial area. There are spots with strong restaurant life and insufficient parking but feel most is relatively spread out.

Comment by Frank Macchio: Strongly feel the sidewalk component not measured reasonably or responsibly, but a knee jerk reaction without thought.

Q. Cody Hermann – Where have Fee monies gone to in the past? Does it go back to those who funded it, to the City Streets ?

A. Chair Kelty – From your lips to Gods ears, Cody. It goes back to the General Fund to be determined by the Mayor and the City Council.

Q. Kim Cody– What compensation are the other businesses receiving if restaurants take over the areas?

A. Al Silvestri - None

Q. Linna Yu –Is there a limit on the space outside of a restaurant?

A. Al Silvestri - He cannot expand unless his neighbor agrees to allow it, and only if he has a frontage hardship and seasonal pedestrian right of way.

Q. Phil Konigsberg – Have you interfaced with the DOH outdoor expansion smoking laws? I’ve called the Health Dept. on indoor smoking, but no one has the answer on outdoor dining smoking.

A. Chair Kelty – Whatever is allowed inside the restaurant is probably allowed on the outside.

Q. Barbara McHugh -A corner outdoor restaurant structure has been using three sides of the location. now. Will they be allowed it to continue use?

A. Al Silvestri – If it’s in compliance, probably yes. I’d like the address to check it out if they’ve exceeded the limits after the fact.

Q. Josh Sussman – Recently a driver turned into a 2-way street but couldn’t go further because a corner outdoor restaurant structure prevented a clear view.

A. Chair Kelty -Josh, if there is a problem, it has to be corrected. The street rule allows enough space must be for fire trucks, ambulances, etc.

A. Al Silvestri – It goes back to the guidelines we are working on.

Q. Chuck Apelian – What about Daylighting the corners for visual acuity?

A. Al Silvestri - Daylighting moves a vehicle off the corner. Anytime engineering feels it should be used, it will be. However, structure guidelines also will help traffic flow.

Comment by Chair Kelty –Daylighting adds to Kim Cody’s loss of more parking spaces lost. He also brought up the release of dining structures in Restricted Districts in New York City. Many of us have also complained and lost respect for DOT’s handling of complaints and enforcement. It’s almost non-existent, which is a loss for the City and the people of New York.

Hye Kyung Yang, City Planning- In conclusion City Planning & DOT will

1) delete ZR Article I, Chapter 4 by (a) removing any language preventing sidewalk cafes in Special Districts; (b) removing any rules around enclosures, operable windows, sidewalk widening that would preclude or limit outdoor dining, (c) clean up any other definite references.

2) Make changes to the current Sidewalk Café program and having it completely under one Agency, the DOT.

3) Creation of a Roadway Café program, also under the DOT. Multiple legal steps are needed to enact a full permanent program while the current emergency program remains in effect through the winter 2022.

Q. Warren Schreiber – What if the outdoor structure mimics more of indoor dining with windows, walls, doors, heavy plastic coverings, etc.?

Q. Millicent O’Meally also rightfully questions what does “**enclosed**” mean. Looking at the picture showing outdoor dining, the windows and doors can be closed as well as opened, making Warren’s point a possibility.

- A. There will be regulations and rules that will control safe dining. We are not allowing “enclosed” to mean with window and doors. The structures must be completely open wherever possible.
- Q. **Chuck Apelian** – When ZR Article 1, Chapter 4 is removed, I am concerned there will be a lapse, or a gap, with no applicable rules until the new rules are in place. I believe there could be, and that would be a problem.
- A. No, that can’t happen because the emergency outdoor program will still be in effect until outdoor dining goes into effect.
- Q. **Chair Kelty’s** - With elections slated soon, what if the new Mayor disbands outdoor dining entirely? It’s a possibility that could happen. Then what!
- Q. **Harpreet Wahan** – As a House of Worship, we would like to have indoor dining.
- A. **Chair Kelty**- You would need permits from the FDNY. However, Houses of Worship do not have restaurant licenses, only Public Assembly permits.
- A. **Al Silvestri** - The most you can do is get a permit for a closed Public Street fair for a day.
- Q. **Kevin Shields** –What if you are a restaurant tenant, do you have to renegotiate your lease and have to pay the owner of the building for the outdoor space also?
- A. **Chuck Apelian** – The outside space is not owned by your landlord, but the City. You would pay the City for the additional space through the DOT like everyone else.
- Q. **Doreen Gatanas**- With winter coming, what about the use of outdoor heaters?
- A. **Al Silvestri** - Heaters will be allowable, provided they are safety compliant.
- Q. **Phil Konigsberg** – What if a restaurant with outdoor dining is sold with remaining use of time left.
- Al Silvestri** – That’s a very good question, which has never been brought up or discussed by anyone. Will bring it up with them downtown and let you know.
- Chair Kelty** asked if anyone from the Public would like to speak. *There being no response, we continued to proceed further.*

First Vice-Chair Apelian gave his report. The committee had a presentation, but because it was by remote, they could not vote on a recommendation to the Board. However, we will review what transpired in committee as well as tonight and craft a motion tonight as follows.

1. **The question that the Dept. of Buildings should be involved with the process and enforcement, not the Dept. of Transportation.**
2. **The concern that the DOT was deleting the Prohibited use in Special Districts, and to allowing it anywhere was disconcerting.**
3. **Although it wasn’t discussed tonight, certain streets like Main Street or 40th Road in downtown Flushing should not have access to this program because of narrow streets, extreme congestion including pedestrian and auto traffic, a railroad and bus terminal, etc.**
4. **Repeated violations of outdoor dining should lead to complete revocation and banning from further participation, instead of just suspension.**
5. **Daylighting the corners and the trade-off on how many parking spaces will be lost is another problem to contend with. We need both the safety and sufficient parking spaces in our daily lives and the balance of both.**
6. **We want DOT to make sure there is no lapse between eliminating the old text and changing over to the new, which could leave us in limbo with more problems.**
7. **We all wanted to help the restaurants and supported the emergency action. Some of it wasn’t done too well and making it permanent now is not the answer. Also brought up recently was Sunsetting it for two years to be reviewed again, because we are living in a quick changing environment today. We can put in either a recommendation to approve, but with all the above**

conditions to be rectified, or to be disapproved because of all the above conditions not taken into consideration. I leave the next statement to you Mr. Chair.

Chair Kelty – I prefer we recommend to disapprove because all of the above conditions are NOT met. Time and again in the past we have recommended approval with restrictions and conditions only to have these restrictions and conditions ignored. If we can't get answers to these valid questions, then **when** can we. I am not blaming DOT, because they are working in a vacuum, but I feel the Council is pushing this before they leave office next year. I'm very unhappy at what's happening. Dropping the restrictions after we worked so hard to put them in place is uncalled for. Also, we would permanently lose the use of our streets and sidewalks, lose more parking spaces and truck deliveries would be difficult, all of which adds multiple dangerous conditions to the people of our communities.

Vice Chair Apelian made the motion to disapprove the Zoning Text Amendment for outdoor dining for all the reasons listed above, seconded by **Kim Cody** and **Josh Sussman**.

DISCUSSION ON THE MOTION:

Kim Cody – Whatever fines or fees paid by the taxpayers, the owners of restaurants, cars, the streets goes into a General Fund. Millions of taxpayer's monies go into projects you are not aware of. It's not going to help enforcement or administration of this project or the taxpayer.

Yackov Pshtissky feels it should be rejected and reviewed at a later date.

Chuck Apelian explained Laws are made in one place only, the City Council. There is no second bite of the apple for us. Our participation on this end on September 27.

Chair Kelty added we can only recommend.

Frank Macchio agrees there are too many moving parts, so Sunsetting and/or disapproval is the way to go.

Warren Schreiber doesn't think the City should be doing this now in the middle of the pandemic. They should extend the suspension of rules they are doing now until it's over.

Chuck Apelian agrees with Warren. We can express this concern before we give our final answer.

Arlene Fleishman wanted to thank Gene, Chuck, and Committee Members, but it's time to think about all the rules and regulations we've voted on in the past that were never enforced and why.

The vote taken was to disapprove the motion giving the list of reasons why they could NOT approve. THE VOTE TAKEN WAS TO DISAPPROVE (40) FOR (0) AGAINST

PUBLIC PARTICIPATION:

Harpreet Wahan said his congregation held prayers yesterday at the Meditation Gardens in remembrance of those who died on 9/11.

The meeting ended at 10 pm,

Respectfully submitted,

Mary Zuliani